TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1935

No. 375

NETTIE MEYER, ANNA JACOBSON, JACOB MEYERHOFF, ET AL., PETITIONERS,

vs.

KENMORE GRANVILLE HOTEL COMPANY ET AL.

No. 376

NETTIE MEYER, ANNA JACOBSON, JACOB MEYERHOFF, ET AL., PETITIONERS,

vs.

KENMORE GRANVILLE HOTEL COMPANY ET AL.

ON WRITS OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

PETITION FOR CERTIORARI FILED AUGUST 17, 1935.

CERTIORARI GRANTED OCTOBER 14, 1935.

IN THE

United States Circuit Court of Appeals
For the Seventh Circuit

No. 5491

IN THE MATTER OF KENMORE-GRANVILLE HOTEL COMPANY, A CORPORATION, DEBTOR.

NETTIE MEYER,

Appellant,

vs.

KENMORE-GRANVILLE HOTEL COMPANY, A CORPORATION, J. GOLD, R. SANDROFF, AND S. ISENBERG, PETITIONING CREDITORS, AND GEORGE W. ROSSETTER, JAY C. McCORD, SIDNEY H. KAHN, MEMBERS OF THE SOVEREIGN AND SOVEREIGN ANNEX FIRST MORTGAGE BONDHOLDERS' COMMITTEE,

Appellees.

Counsel for Appellant:

MR. MEYER ABRAMS,

Counsel for Appellees:

MR. IRVING H. FLAMM,
MR. MAX FREDERICK GOLDBERG,
MR. BERNARD NATH,
MR. HERBERT M. LAUTMANN,
MR. I. E. FERGUSON,
MR. ARTHUR M. COX,
MR. CLAUDE A. ROTH,
MR. WILLIAM J. FRIEDMAN,

Appeal from the District Court of the United States for the Northern District of Illinois, Eastern Division.

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1 Pleas in the District Court of the United States for the Northern District of Illinois, Eastern Division, begun and held at the United States Court Room, in the City of Chicago, in said District and Division, before the Honorable John P. Barnes, District Judge of the United States for the Northern District of Illinois on the 20th day of March, in the year of our Lord one thousand nine hundred and thirty-five, being one of the days of the regular March Term of said Court, begun Monday, the Fourth day of March, and of our Independence the 159th year. Placita.

Present:

Hon. John P. Barnes.
William H. McDonnell, U. S. Marshal.
Henry W. Freeman, Clerk.

2 IN THE DISTRICT COURT OF THE UNITED STATES.

Northern District of Illinois.

Eastern Division.

In the Matter of
Kenmore-Granville Hotel Company,
a corporation,
Debtor. } No. 58701

Be It Remembered, that the above-entitled action was commenced by the filing of the following Creditors' Petition in the above-entitled cause in the office of the Clerk of the District Court of the United States for the Northern District of Illinois, Eastern Division, on this the 4th day of February, 1935.

Feb. 4, 3 IN THE DISTRICT COURT OF THE UNITED STATES.

* * (Caption—58701) * *

To the Honorable the Judges of Said District Court:

Your petitioners, J. Gold and R. Sandroff, both of the City of Chicago, County of Cook, and State of Illinois, and S. Isenberg, of Grenada County, in the State of Mississippi, respectfully represent:

1. Kenmore-Granville Hotel Company, the above named debtor, is a commercial corporation organized under the laws of the State of Illinois, which could become a bankrupt under Section 4 of the Act of Congress entitled "An act to establish a uniform system of bankruptcy throughout the United States" approved July 1, 1888, and acts amendatory thereof and supplementary thereto (herein referred to as the bankruptcy act); and said debtor is a corporation which could file a petition or answer under section 77-(b) of said bankruptcy act and be eligible for the relief provided thereunder.

2. The debtor has had its principal place of business and its principal assets in the City of Chicago, in the County of Cook, and State of Illinois, during the six months immediately preceding the date of this petition.

4 3. The debtor is a building corporation and owns real estate in the City of Chicago, County of Cook, and State of Illinois, (within the territorial jurisdiction of this court), legally described as:

The south thirty-seven and one-half (37½) feet of lot eight (8), all of lots nine (9), ten (10), eleven (11), and twelve (12), all in Block six (6) in Cochran's Second Addition to Edgewater, said Addition being a subdivision of the East fractional half (except the West one thousand three hundred twenty (1,320) feet of the South one thousand nine hundred thirteen (1,913) feet thereof), of Section five (5), Township forty (40) North, Range fourteen (14), East of the Third Principal Meridian,

which real estate is improved with two buildings as follows:

(a) A ten story brick and stone building erected on the south portion of the above described real estate, on or about the year 1919, containing divers hotel rooms and apartment units, including all equipment, furniture, and furnishings, said building having at the date of its erection been designated as the "Sovereign."

(b) A ten story brick and stone building erected on the north portion of the above described real estate, on or about the year 1922, improved with divers hotel apartment units, including all equipment, furniture, and furnishings, said building having at the time of its erection been designated as the "Sovereign Annex."

4. That said property described above as the "Sovereign" is subject to a first mortgage lien evidenced by a trust indenture to Arthur W. Straus, Trustee, (who has since been succeeded by Melvin L. Straus, successor trustee,) dated

5 November 1, 1919, and recorded on the 22nd day of December 1919, in the office of the Recorder of Deeds of Cook County, Illinois, as Document No. 6699724; that said trust indenture was executed to secure first mortgage bonds aggregating One Million Dollars ($1,000,000.00), of which first mortgage bonds in the aggregate principal amount of Five Hundred Seventy-Five Thousand Dollars ($575,000.00) are still unpaid and outstanding among numerous creditors, who are scattered in various communities within the State of Illinois and elsewhere, most of them being unknown to your petitioners, or to each other; that in addition to said Five Hundred Seventy-Five Thousand Dollars ($575,000.00) first lien bonds, there are outstanding mortgage bonds on which there is unpaid some One Hundred Thirty-Seven Thousand

Dollars ($137,000.00), but which, your petitioners allege, are subordinate and inferior to the lien of the outstanding first mortgage bonds aforesaid.

5. That said property described above as the "Sovereign Annex" is subject to a first mortgage lien evidenced by a trust indenture to Melvin L. Straus, Trustee, (who has since been succeeded by Samuel J. Straus, successor trustee,) dated August 1, 1922, and recorded on the 16th day of November, 1922, in the office of the Recorder of Deeds of Cook County, Illinois, as Document No. 7717203; that said trust indenture was executed to secure first mortgage bonds aggregating One Million Dollars ($1,000,000.00), of which first mortgage bonds in the aggregate principal amount of Seven Hundred Ninety-Eight Thousand Dollars ($798,000.00) are still unpaid and outstanding among numerous creditors, who are scattered in many communities in the State of Illi-
6 nois and elsewhere, most of them being unknown to your petitioners, or to each other; that in addition to said Seven Hundred Ninety-Eight Thousand ($798,000.00) Dollars of first lien bonds, there are outstanding mortgage bonds on which there is unpaid some One Hundred Two Thousand Dollars ($102,000.00), but which, your petitioners allege, are subordinate and inferior to the lien of the outstanding first mortgage bonds aforesaid.

6. That said two properties above described as the "Sovereign" and "Sovereign Annex," owned by the debtor, have at all times since their erection been operated together as one entire hotel unit under the style name of "Sovereign Hotel"; that said two buildings are immediately adjacent to, and are connected with each other, and that the nature of their construction and location is such as to render it necessary that both of said properties be at all times in the future operated as one entire project, in order to best serve the creditors and stockholders of the debtor; that said two properties are heated by a single heating plant, which permits the said entire property to be heated with greater economy; that said properties have at all times been operated by one management, thus affording greater economy and efficiency in the operation of same.

7. That about the year 1931, due to a decline in rents and other causes, default was made in the payment of principal and interest required under the first mortgage trust indenture on the "Sovereign" above mentioned, and, by reason of said default, the Trustee under said mortgage indenture, on

behalf of all the bondholders thereby secured, declared the entire indebtedness immediately due and payable, and in
7 April, 1931, filed a proceeding to foreclose said mortgage lien in the Circuit Court of Cook County, Illinois, as Case No. B-219230, which proceeding is still there pending.

8. That about the year 1931, due to a decline in rents and other causes, default was made in the payments of principal and interest required under the first mortgage trust indenture on the "Sovereign Annex" above mentioned, and, by reason of said default, the Trustee under said mortgage indenture, on behalf of all the bondholders thereby secured, declared the entire indebtedness immediately due and payable, and in April, 1931, filed a proceeding to foreclose said mortgage lien in the Circuit Court of Cook County, Illinois, as Cose No. B-218773, which proceeding is still there pending.

9. That in each of said separate proceedings decrees were entered fixing the respective amounts due to the respective complainants, including all costs, expenses, and fees incurred in said proceedings, and requiring that said respective properties each be sold under said respective decrees to satisfy the respective amounts found to be due thereunder, all of which will more fully appear from said proceedings and the orders and decrees entered therein and spread of record, said proceedings and all orders therein being by reference made a part hereof.

10. That in addition to the encumbrances secured by the trust indentures as aforesaid, there are tax liens in favor of the County of Cook on said premises for arrears in general taxes levied against the entire property, as follows:

Unpaid balances of approximately $10,000.00 for the
8 year 1929; $15,000.00 for 1930; $30,000.00 for 1931, $23,600.00 for 1932, and $10,000.00 for 1933, together with accrued statutory penalties on said unpaid taxes;

that by reason of said tax arrears, Thomas D. Nash, County Treasurer and ex officio County Collector of said County of Cook, was on, to-wit, the 14th day of August, 1934, appointed tax Receiver for said premises in a proceeding then pending in the Circuit Court of Cook County, known and docketed as Case No. 34-C-13891, to enforce said tax liens and for the purpose of appointing such tax Receiver for said premises, which proceeding is still pending; that said Thomas D. Nash is now acting as such Receiver, and collecting the income from said premises and is, presumably, applying the net income on said tax liens.

11. That during the year 1931 a bondholders' committee was organized for the alleged purpose of representing and protecting the interests of the bondholders of said "Sovereign" property and during said year a bondholders' committee was likewise organized for the "Sovereign Annex" mortgage bonds; that pursuant to the terms of a depositary agreement, about 95% of all first mortgage bonds outstanding on said "Sovereign," and pursuant to the terms of another depositary agreement, about 95% of all first mortgage bonds outstanding on said "Sovereign Annex," have been deposited and are now on deposit with the American National Bank and Trust Company, as Depositary, said bonds being now under the control of said Committees, pursuant to said depositary agrements. A copy of such depositary agreement relating to the "Sovereign" is hereto attached as Exhibit "E", the depositary agreement with respect to the "Sovereign Annex" being substantially similar, except for approporiate changes in name, description of the property, and bonds.

9 12. That on or about February, 1935, George W. Rossetter, Jay C. McCord, and Sidney H. Kahn, who comprise all of the members of said Bondholders' Committees on said "Sovereign" and "Sovereign Annex," formulated a joint plan of reorganization for said project, and subsequently mailed a copy of said plan, or a description or summary thereof, to the owners of said bonds, a copy of which notice and summary of said plan is hereto attached as Exhibit "F" and made a part hereof; that the owners and holders of more than two-thirds of the first mortgage bonds outstanding against each of said properties thereupon assented to said plan of reorganization.

13. That although your petitioners deem the essential features of said joint reorganization plan, heretofore submitted by said Committees, except as hereinafter stated) to be fair and equitable to all classes of creditors and to the stockholders of the debtor, they believe that said Bondholders' Committees and said Trustees under the respective first mortgage trust indentures on said properties will not be able to consummate said plan without long and burdensome delay and irreparable loss, except by a proceeding herein under the powers and authority conferred upon this Honorable Court by Section 77-(b) of the Bankruptcy Act as amended; that only by mean of a proceeding herein can such reorganization be effected without resorting to separate foreclosure sales

under the separate mortgages against each of said two units at a great sacrifice to creditors.

14. A brief description of the assets, liabilities, capital stock, and financial condition of the debtor is contained in the following exhibits annexed hereto and made a part hereof:

10 Exhibit "A"—A balance sheet of said entire project operated as the "Sovereign Hotel," prepared for Thomas D. Nash, Receiver, by McCoy, Holland, Arndt & Sweeney, certified public accountants, showing its condition as of October 31, 1934; that since said date there has been no material change in debtor's financial condition.

Exhibit "B"—A statement prepared by McCoy, Holland, Arndt & Sweeney, certified public accountants, for said Thomas D. Nash, Receiver, showing the earnings and expenses of said "Sovereign Hotel" for the month of October, 1934, and also for the ten (10) month period ending October 31, 1934.

15. That your petitioners are each bond owners and creditors of the debtor and own an aggregate of Seven Thousand Dollars ($7,000.00) in first mortgage bonds on said "Sovereign" property, and an aggregate of Eight Thousand ($8,000.00) Dollars in first mortgage bonds on said "Sovereign Annex" property, all of which are obligations of the debtor; that your petitioners, as such creditors of the debtor, have provable claims against the debtor, aggregating over One Thousand ($1,000.00) Dollars in excess of the value of the securities held by them; that this petition is filed in good faith and is not for the purpose of obtaining any preference or improper advantage for any one creditor over another, save as such creditors are lawfully entitled to such preference, if any, by virtue of any lien or securities or otherwise.

16. That the debtor, being unable to pay its matured debts, has, within four months prior to the filing of this petition, admitted in writing its inability to pay its debts; that by reason of its inability to pay its tax obligations, said

11 Thomas D. Nash, who was appointed Receiver of said property by the Circuit Court as aforesaid, has taken charge of and is now in possession of the debtor's said property; that by reason of the aforesaid, the debtor has expressed in writing its willingness to submit to a reorganization under the provisions of said Section 77-(b) of the Bankruptcy Act.

17. The facts showing the debtor's need for relief under

Section 77-(b) of the said bankruptcy act as amended, in addition to the facts above alleged, are as follows:

(a) The debtor is insolvent or unable to meet obligations which have matured. Debtor has insufficient cash working capital to meet its fixed charges and accrued taxes, and by reason of its default in the mortgage encumbrances as above mentioned, its credit is seriously impaired, so that it will be difficult, if not impossible, to obtain adequate financial assistance from any source.

(b) A readjustment of the debtor's capital structure is necessary, so that the debtor's income under present day conditions will be adequate to meet fixed charges.

(c) Such reorganization for the interest and benefit of all creditors and stockholders, can best be effected under the direction, authority, and jurisdiction conferred by the provision of Section 77-(b) of said bankruptcy act, thereby avoiding unnecessary delay, expense, waste, uncertainty, and opportunities for oppression by stubborn and unreasonable minority creditors, all of which might be possible but for the provision of said Section 77-(b) of the bankruptcy act.

18. Your petitioners believe that the plan of reorganization heretofore submitted by the Bondholders' Committees as aforesaid, and described in Exhibit "F" herein, should be modified and amended so as to permit the majority of the holders of voting trust certificates, provided under said plan, to elect successor Trustees, or to terminate said trust agreement at any time, and that said plan should be further modified and amended in such other respects as may be necessary in order to conform to the provisions of said Section 77-(b) of the Bankruptcy Act as amended; and your petitioners believe that said plan, if so amended and modified, will be feasible and will be fair and equitable to all classes of creditors and stockholders, and that such amended and modified plan will be acceptable to creditors holding more than two-thirds in amount of the claims of each class against the debtor and to the holders of a majority of each class of stock of the debtor.

Wherefore, your petitioners pray that an order be entered herein:

(1) Approving this petition as properly filed under said Section 77-(b) of the bankruptcy act as amended.

(2) Requiring the debtor to make answer to this petition within ten days after the service upon it of a copy hereof.

(3) That the Court enter such order as it may deem ap-

propriate with respect to the management of the debtor's property pending the consummation of a reorganization hereunder.

(4) That the debtor be directed to give such notice to all its creditors and stockholders, as the Court may deem proper, of a hearing to be held by the Court within thirty days after approval of this petition for the consideration of whether the debtor shall be permitted to operate said property or a trustee appointed thereof, etc.

(5) That this Honorable Court shall direct the debtor
13 corporation to file such schedule and submit such other information as may be necessary to disclose the conduct of the debtor's affairs and the fairness of any proposed plan.

(6) That this Court, after hearing objections, if any, to any plan herein proposed, shall confirm the plan, if satisfied that compliance has been made with the provisions of Section 77-(b) of said bankruptcy act as amended.

(7) That this Honorable Court shall enjoin or stay the commencement or continuance of any judicial proceeding now pending against the debtor or for the purposes of enforcing any lien upon the estate of the debtor, or any part thereof.

(8) That your pettioners may have such other, further, and different relief as to the Court may seem just, lawful, and proper.

J. GOLD,
R. SANDROFF, and
S. ISENBERG,
By IRVING H. FLAMM.

TARNOPOL, FLAMM & SIDEMAN,
Attorneys for said Petitioning Creditors.

14 State of Illinois, } ss.
County of Cook. }

IRVING H. FLAMM, being first duly sworn on oath, deposes and says that he is the duly authorized agent and one of the attorneys for the petitioning creditors mentioned in the aforegoing petition; that he has been authorized by said petitioning creditors to sign said petition for and in their behalf and to execute this affidavit thereto; that the facts stated and contained in the aforegoing petition are true to the best of his knowledge and belief.

IRVING H. FLAMM.

Subscribed and sworn to before me this 4th day of February, A. D. 1935.

.....

Notary Public.

15 • • EXHIBIT A. • •

16 • • EXHIBIT B. • •

(Omitted pursuant to stipulation filed April 16, 1935.)

21-41 • • EXHIBIT E. • •

(Omitted pursuant to stipulation filed April 16, 1935 and following matter inserted in lieu thereof.)

EXHIBIT "E."

This Agreement, Made this twenty-first day of April, 1931, between Sidney H. Kahn, Charles C. Irwin, Frederick W. Straus, N. H. Oglesbee, and J. C. Wright (hereinafter called the "Committee"), party of the first part, and such holders of The Sovereign 6% First Mortgage Gold Bonds, dated November 1, 1919, hereinafter more particularly described (hereinafter called the "bonds"), as shall become parties to this Agreement, as herein provided, parties of the second part, (hereinafter called the "Depositors");

Witnesseth:

That Whereas, Albert Hotel & Building Corporation, an Illinois corporation, executed and delivered its 6% First Mortgage Gold Bonds, dated November 1, 1919, in the aggregate principal amount of $1,000,000, and for the purpose of securing, among other things, the payment of the principal of and interest on said bonds said Albert Hotel & Building Corporation (which corporation, together with its successors to the title to the property conveyed by the Trust Deed herein described, are hereinafter sometimes referred to as "Corporation"), executed and delivered to Arthur W. Straus, of Chicago, Illinois, as Trustee, (which said Trustee and his successors in trust under the Trust Deed herein described are hereinafter sometimes referred to as "Trustee"), a certain Trust Deed, dated November 1, 1919, conveying and mortgaging to said Trustee, and to his successors in trust, a

certain property situated at the Northwest Corner of Kenmore and Granville Avenues, Chicago, Illinois, commonly known as "The Sovereign", which said Trust Deed and any and all instruments confirmatory thereof and/or supplemental thereto are hereinafter sometimes referred to collectively as "Mortgage", and all of the estate and property conveyed and mortgaged by said Mortgage, is hereinafter sometimes referred to as "Mortgaged Property";

And Whereas, the Corporation has made defaults in the due observance or performance of certain of the covenants and provisions in said Mortgage contained;

And Whereas, united action and co-operation on the part of the holders of the bonds of the Corporation is advisable and necessary in order that their rights and interests may be protected, and such united action and co-operation can best be procured by the means of a Committee, as in this Agreement provided;

And Whereas, the Committee has consented to represent and to act for the Depositors as hereinafter set forth;

Now Therefore, In consideration of the premises and of the mutual advantages that will arise therefrom, all Depositors, each for himself, but not for the others, or any of them, agree with each other and with the Committee and with the Depositary hereinafter appointed, as follows:

Article I.

Deposit of Bonds and Issuance of Certificates of Deposit and Appointing Depositary.

Section 1 appoints Straus National Bank and Trust Company in Chicago as Depositary and defines the active duties and powers of the Depositary. Contains the form of Certificate of Deposit, including provision that the depositors by depositing bonds and accepting certificates assent to the provisions of the Depositary Agreement, etc.

Article II.

Personnel and Duties of the Committee.

Enumerates powers of Committee to employ agents and counsel, a Secretary, etc.,—Committee shall keep a record of its proceedings and action—Committee shall be entitled to re-

imbursment for advances and expenses, etc.,—Committee entitled to hold deposited bonds on property which comes into its hands for expenses, including compensation of Depositary, its agents, and attorneys,—holders of certificate shall not be personally liable for such expenses, but Committee shall look solely to the security of the deposited bonds and all property subject the agreement for such expenses, liabilities, etc.,—Committee members may be depositors of bonds and entitled to the same rights and subject to the same liabilities as other depositors—Committee has the right to cooperate with or join other committees involving said property.

Article III.

Powers of the Committee.

Depositors to transfer and assign to Committee the full, legal, equitable, and beneficial title to deposited bonds for the purposes hereof, and agree that Committee is vested with every right, power, and authority, to enable it to perform purposes of the agreement, possessed by the respective owners or holders of said bonds deposited hereunder, including the power to institute or cause to be instituted proceedings at law, in equity, in bankruptcy, or otherwise, or to intervene therein in connection with the foreclosure of said mortgage or otherwise, or to procure payment of the deposited bonds, or to exercise, assert, and enforce, in its discretion, any powers vested in the owners of the bonds, and to do such acts as the Committee may deem judicious and proper in order to carry out the purposes of this agreement, although such powers be of a character not contemplated at the time of the execution hereof.

Article IV.

Plan of Reorganization or Readjustment.

Section 1. The Committee shall have power either before or after any sale of the Mortgaged Property or acquisition thereof by the Trustee or the Committee on foreclosure or otherwise to make, enter into, or become a party to (either alone or in conjunction with other bondholders, creditors, stockholders, or committees representing them, or otherwise) a plan or agreement of reorganization or readjustment of the

property and/or affairs of the Corporation containing such terms and conditions as the Committee may, in its sole discretion, deem proper or advisable, or the Committee may approve and adopt any such plan or agreement though not prepared by it. Such plan or agreement may constitute managers of the reorganization or readjustment under it and provide for their compensation and expenses, and the members of the Committee or any of them, may act as such managers or may be members of the Committee constituted by such plan.

Such plan or agreement of reorganization or readjustment may be effected (but need not be) by a merger or consolidation of the Corporation with any other corporation, corporations, trust or trusts, or may be effected by a sale and/or the transfer of the Mortgaged Property or other property of the Coporation to any person or persons, corporation or corporations, trust or trusts, or by an exchange of the deposited bonds and/or coupons for other bonds, securities and/or stocks.

Upon the approval and/or adoption of any such plan for reorganization or readjustment by the Committee a copy thereof shall be filed with the Depositary and with any Sub-Depositary, and thereupon a brief notice of the fact of such adoption and filing and a summary of such plan shall be prepared by the Secretary of the Committee, and shall be mailed in an envelope with postage prepaid to each of the Depositors, addressed to them at the addresses which they shall have given in writing to the Depositary, and the mailing of such notice shall be deemed to be and shall be sufficient and conclusive evidence of notice to the Depositors of the approval and adoption of any such plan or agreement by the Committee. Any Depositor may within thirty (30) days after the placing of such envelope in the United States mails in the City of Chicago, Illinois, or at such other place in the United States as said Secretary may select, file with the Depositary a notice, in writing, that such Depositor dissents from such plan or agreement, and may withdraw from deposit bonds and/or coupons in the aggregate principal amount represented by the Certificate held by him or anything then held by the Depositary and/or the Committee in lieu thereof, upon surrender of his Certificate properly endorsed in blank and upon payment of such amount as the Committee, in its absolute discretion, may fix as his proportion of the expenses of the Committee, including, among other things, attorneys'

fees, and upon payment of his pro rata share, as the Committee in its absolute discretion may prescribe, of any indebtedness, liabilities and obligations incurred by the Committee and/or of any advances which may have been made by or to the Committee, in which event the withdrawing Certificate holder shall receive such evidence of interest in such advances as the Committee, in its absolute discretion, may prescribe. The exercise of such right of withdrawal shall release and discharge the Committee and the Depositary and their officers, agents and attorneys from any and all liability at law or in equity, in tort or in contract, known or unknown, fixed or contingent, or of any nature or character whatsoever, as to each such withdrawing Depositor. Such plan or agreement shall be binding upon all Depositors who shall not have filed dissent and made such withdrawal within the period and in the manner above provided, their heirs, legal representatives, successors and assigns, all of whom shall be conclusively deemed to have assented thereto, whether they shall have received actual notice thereof or not, and shall be irrevocably bound and concluded by the same.

The Committee is hereby authorized and empowered (whether before or after the adoption or submission of any plan or agreement) to adopt, approve or accept any amendment to or modification of any plan or agreement so formulated, adopted, accepted or approved, or supplemental thereto, or to adopt, approve or accept a new plan or agreement in lieu thereof. Copies of such amendment, modification or supplement thereto or of any such new plan or agreement shall be filed, notice thereof shall be given and modifications therefrom may be effected, all upon the same terms and conditions, and with the same effect in these and all other respects, as herein provided with reference to the original plan or agreement; provided, however, that if in the opinion of the Committee, which shall be conclusive and binding upon the Depositors, such amendment, modification or supplement does not materially affect the rights of the Depositors hereunder, no notice of the adoption, approval or acceptance thereof shall be necessary, and upon the filing with the Depositary of copies of such modification, amendment or supplement and of the approval thereof by the Committee, the same shall become binding upon all the Depositors.

The Committee is hereby fully authorized and empowered in its sole and absolute discretion, at such times as it may deem expedient, to declare any such plan or agreement

or modified plan or agreement operative and to carry out any such plan or agreement or modified plan or modified agreement on the part of all the Depositors who shall not dissent in the manner hereinbefore indicated. Notwithstanding that the Committee has approved and adopted any plan and/or agreement or modified plan and/or agreement of reorganization or readjustment, and has submitted the same to the Depositors, and the said Depositors shall have been conclusively deemed to have assented thereto as herein provided, the Committee may, nevertheless, without submission to the Depositors of the question of abandonment of such plan and/or agreement, or modified plan and/or agreement, abandon such plan or agreement, or any modified plan or agreement, and terminate the same. In case the Committee shall finally abandon a plan or agreement or a modified plan or agreement which may have been adopted, and shall not desire the substitute any other plan or agreement therefor, the bonds and coupons deposited or held hereunder, or their proceeds, substitutes or avails then under the control of the Committee, shall be delivered to the several Depositors or their transferees in amounts representing their respective interests, upon surrender of their respective Certificates properly endorsed in blank, and the payment of such indebtedness, liabilities and obligations, if any, as shall have been paid or incurred by the Committee and/or of such advances as may have been made by or to the Committee, and the Committee shall have full and absolute power to determine and to apportion the share of such indebtedness, obligations and expenses to be borne by each Depositor.

Section 2. The title to any securities, property or moneys acquired and/or to be acquired by the Committee prior to and/or upon and/or subsequent to the consummation of a plan or agreement of reorganization or readjustment in accordance with the provisions of this Article IV, may, in the discretion of the Committee, be vested in a corporation to be organized by the Committee, or may be vested in a trustee or trustees (who may, but need not be, a member or members of the Committee); or the title to such securities, property or moneys may be held in such other manner as the Committee may determine. The Committee, in its discretion, may distribute stock, securities and/or certificates of beneficial interest of such corporation, trust and/or trustee or trustees to the Depositors pro rata to their several and respective bond and coupon holdings as evidenced by the Certificates

therefor; or the Committee may, in its discretion, hold the said securities, property or moneys and at such time or times as it may deem advisable sell or convert the said property or securities, or any part thereof, into money and distribute the proceeds thereof, and the moneys, if any, theretofore held, to the Depositors pro rata as aforesaid. Before any such distribution the expenses and obligations of the Committee shall be provided for. After any such distribution, the Committee shall thereupon be relieved from all liability hereunder. The accounts kept and the distribution made by the Committee shall be final as to calculation and amount.

As long as the Committee shall hold any property or securities the Committee may manage, control, vote upon or otherwise deal with the same in such manner as it may deem desirable and may enter into agreements providing for the voting of any stock held by the Committee, or may distribute voting trust certificates to the Depositors in lieu of any such stock.

Article V.

Meetings of Depositors.

Any matter or question not herein provided for or suggested by the Committee, or any amendment of the provisions of this agreement may, in the sole discretion of the Committee, be submitted to depositors at a meeting to be called in a designated manner, etc.

Article VI.

Records of the Committee.

The Committee shall keep books showing its receipts and disbursements, and a record of its proceedings, and upon the termination of its duties an account of its expenses and disbursements shall be filed with the Depositary, and thereupon the Committee, and each member thereof, shall be discharged from all its or his duties, liabilities or obligations as to all Depositors hereunder. The Committee shall not be required to make any report or accounting other than said final account.

Article VII.

Termination of Agreement.

The Committee may, at any time (whether before or after the adoption or submission of any plan or agreement), terminate this Agreement whenever it shall think best so to do, by giving notice of such termination to each of the Depositors, by letter, duly mailed, with postage prepaid, ten days before such termination, addressed to the last known post-office address of each Depositor, as shown by the books of the Depositary; and this Agreement shall be terminated whenever the termination thereof shall be requested in writing or writings filed with the Depositary by Depositors holding Certificates representing eighty per cent (80%) in principal amount of the bonds deposited hereunder, but only on such terms as shall satisfy all obligations of the Committee. The termination of this Agreement shall not affect any provisions, assents, acts, agreements or proceedings, whether of a legal nature or otherwise, that the Committee has made, done or instituted, prior to such termination. In event of such termination of this Agreement, the Depositors, upon the payment of the reasonable compensation, fees, costs, expenses, disbursements and outlays of the Committee and of the Depositary or any Sub-Depositary, and upon reimbursement and payment to the Committee and the Depositary for all indebtedness, obligations and liabilities incurred by the Committee and the Depositary, shall, upon the surrender to the Depositary of their Certificates endorsed in bank, be entitled to their pro rata share of all property, securities and cash held subject hereto, which, except as to money and property received from the sale of property subject to said Mortgage, shall be disposed of and distributed in the manner hereinbefore directed.

The Committee may as a condition precedent to any partial distribution require the presentation of Certificates for the notation thereon of such distribution.

Article VIII.

Liability of Committee and Depositary.

The Committee, and each member thereof, and the Depositary are made liable only for bad faith in the discharge of their duties, etc.

Article IX.

Removal and Resignation of Depositary.

The committee has power to remove the Depositary and appoint a successor, provided that the successor shall be a Trust Company or a State or National Bank of Chicago, etc.

Article X.

Chairman and Secretary of Committee Designated.

Article XI.

Miscellaneous.

Descriptive words, "mortgage", "bond or bonds," "trustee," and "Secretary", described. The term "corporation" shall be deemed to include any person, corporation, or trustee succeeding to the title to the mortgaged property, or any part thereof, or having any interest therein.

Article XI.

Section 6. The invalidity of any one or more phrases, clauses, sentences and/or paragraphs shall not affect the remaining portions of this Agreement, or any part thereof, all of the phrases, clauses, sentences and/or paragraphs of this Agreement being inserted conditionally on their being held valid in law, and in the event that any one or more of the phrases, clauses, sentences and/or paragraphs contained herein should be invalid, this Agreement shall be construed as if such invalid phrases, clauses, sentences and/or paragraphs had not been inserted.

Section 7. This Agreement shall be construed solely as an agreement among the parties hereto, and solely affecting and relating to the Committee, the Depositors, and the Depositary or Sub-Depositary, and neither the owners or holders of bonds and/or coupons not deposited or subjected to the operation of this Agreement in accordance with the provisions hereof, nor any other person, firm, or corporation, shall have any rights whatsoever hereunder. This Agreement shall bind and inure to the benefit of the several parties hereto and each of them, and each and all of the survivors, heirs, executors, administrators, successors, and assigns of said parties.

Article XII.

Execution of Agreement.

Section 1. The members of the Committee by their signatures to this agreement, signify their consent to accept and exercise such powers and authority (subject to the terms thereof) as may be conferred upon them by the terms and provisions of this Agreement. This Agreement may be executed by the members of the Committee in one or more counterparts, and all of such counterparts shall constitute the original Agreement. This Agreement shall take effect and be operative upon the Depositors hereunder, irrespective of the number of bonds and/or coupons that may be deposited hereunder.

Upon this Agreement being signed by any three members of the Committee in person or by duly authorized attorneys-in-fact, the Committee shall be deemed to be constituted and this Agreement shall become effective as to the members so signing.

In Witness Whereof the members of the Committee, as party of the first part, have hereunto set their hands and seals, and the Depositors, as parties of the second part, evidence their assent hereto by their respective deposits hereunder of said bonds and/or coupons in the manner hereinbefore provided, all as of the day and year first above written.

.....(Seal)
.....(Seal)
.....(Seal)
.....(Seal)
.....(Seal)

Committee.

To evidence its acceptance of the duties of the Depositary hereunder, Straus National Bank and Trust Company of Chicago has caused this Agreement to be signed in its corporate name by one of its Vice-Presidents, and its corporate seal to be hereto affixed by one of its Assistant Trust Officers.

STRAUS NATIONAL BANK AND TRUST COMPANY OF CHICAGO,

By .....,

Vice-President.

Attest:

.....,

Assistant Trust Officer.

17 EXHIBIT "F".

(Letterhead of The Sovereign and Sovereign Annex, Chicago, Illinois.)

NOTICE OF PLAN OF REORGANIZATION.

To holders of the 6% First Mortgage Gold Bonds of Albert Hotel & Building Corporation, Dated November 1, 1919, and the 6½% First Mortgage Gold Bonds of Sovereign Hotel Corporation, Dated August 1, 1922, and/or Certificates of Deposit Issued Therefor:

The Sovereign First Mortgage Bondholders' Committee, pursuant to the provisions of the Deposit Agreement dated April 21, 1931, and the Sovereign Annex First Mortgage Bondholders' Committee pursuant to the provisions of the Deposit Agreement dated January 23, 1931, have formulated and adopted a Plan for the joint reorganization of the financial structures of The Sovereign and the Sovereign Annex on behalf of the holders of bonds of the above described issues.

The 6% First Mortgage Gold Bonds of Albert Hotel & Building Corporation (known as The Sovereign bonds) were issued under a Trust Deed and Chattel Mortgage dated November 1, 1919, securing an issue of bonds in the original aggregate principal amount of $1,000,000, of which $575,000 are outstanding, unsubordinated and unpaid. The 6½% First Mortgage Gold Bonds of Sovereign Hotel Corporation (known as the Sovereign Annex bonds) were issued under a Trust Deed and Chattel Mortgage dated August 1, 1922, securing an issue of bonds in the original aggregate principal amount of $1,000,000, of which $798,000 are outstanding, unsubordinated and unpaid.

Description of Property.

The Sovereign and the Sovereign Annex, although originally financed independently of each other, were designed to be and have always been operated as a single unit, the Annex being an integral part of the original building. The property consists of two immediately adjacent fireproof apartment hotel structures, The Sovereign portion containing 126 suites of one, two and three rooms each and the Sovereign Annex portion containing 198 furnished hotel

rooms, each with bath. The properties together form a high-class residential project. Among the facilities afforded by the property is a swimming pool.

The land upon which the buildings are located fronts approximately 135½ feet on Kenmore Avenue with a depth of 150 feet on Granville Avenue, Chicago, Illinois. The property is in good physical condition, although the furnishings and equipment are in need of some rehabilitation, and it is possible that it may become advisable to install additional kitchenette equipment in certain of the apartments. This location is regarded as desirable for the purposes for which the building is being used.

Financial Position of Property.

Funds were not deposited to meet the payments on the bonds of the Sovereign Annex issue, whereupon the Sovereign Annex Committee was formed and all known holders of the Sovereign Annex first mortgage bonds were requested to authorize the Committee to represent them in the development of a joint reorganization of the financial structures of the two properties. Funds were not deposited to meet the semi-annual interest due May 1, 1931 on the bonds of The Sovereign issue, whereupon the Sovereign Committee was formed and all known holders of The Sovereign first mortgage bonds were requested to authorize the Committee to proceed in steps toward reorganization on their behalf, by depositing their bonds. At the present time, 93% in principal amount of The Sovereign bonds have been deposited and 95% in principal amount of the Sovereign Annex bonds have been deposited. In addition to the lien of the unsubordinated first mortgage bonds which are outstanding, the property is also subject to the lien of advances totaling approximately $396,900.00 previously made by S. W. Straus & Co. and by an affiliated company, to maintain payments to the bondholders of bonds and coupons, for which funds were not supplied by the property. $16,560.00, included in the foregoing amounts, are unsubordinated advances made by S. W. Straus & Co. on account of the semi-annual interest due February 1, 1931, on the Sovereign Annex issue and held on a parity with the first mortgage bonds, in accordance with a letter to the bondholders dated January 24, 1931, announcing the formation of the Committee for that issue. In addition, S. W. Straus & Co. and its affiliated company had pre-

viously acquired title to the property on account of the subordinated advances above mentioned.

Possession of the buildings was voluntarily surrendered to the Trustees under the respective Trust Deeds, as a result of which, the income from the property since the date of such possession has been applied or is being held for the benefit of the respective first mortgage bondholders, and that portion of these funds which is available to the Committees will be applied on behalf of the depositing bondholders in the manner hereinafter described.

The balance of the 1929 and 1930 taxes, after payments totaling $5,417.60, and the taxes for the first half of 1931, inclusive of penalties, total approximately $65,500. Taxes for the second half of 1931 will amount to approximately $15,500 and the 1932 taxes, which have not yet been billed, are estimated at approximately $28,750.

General Situation.

According to a report of the operation of the property, as prepared by Horwath & Horwath, Accountants and Auditors, for the five months ended May 31, 1933 (a summary of which is attached hereto and marked Exhibit "A", which exhibit also includes earnings figures for the calendar years 1931 and 1932), on the basis of accrued income less expense the property had an operating profit of $13,576.05 before provision for current taxes for the period, estimated at $8,541.65, which would leave a surplus available for financing charges, including interest requirements, of $5,034.40. The property had an average occupancy of 68.4% during May, 1933, and an average occupancy for the five months ended May 31, 1933, of 67.1%.

It is apparent from the operating figures that the earnings of the buildings are far short of meeting the interest and principal requirements fixed under the bond issues. It is also obvious that the establishment of any fixed requirements or the placing of a funded indebtedness in a substantial amount against the property at this time would be hazardous. Nevertheless, the security for the issues is a high-grade property enjoying a fair location and one which should improve in earnings and value with the renewal of real estate activity. It has been apparent, of course, that the properties since they are operated as a unit, must of necessity be reorganized simultaneously under a single financial structure, thereby

saving considerable expense attendant to the readjustment. The Committees have carefully considered all these factors in formulating the program of readjustment, with the result that the following Plan of Reorganization has been adopted by both Committees with the object of enabling the depositing bondholders of both The Sovereign and the Sovereign Annex issues to obtain the benefits of any improvement in earnings and value which the property may experience.

18 By reason of the defaults under the first mortgage trust deed, the Trustee under the Sovereign Annex issue declared the principal and interest of all bonds of this issue to be due and payable and filed a bill to foreclose the first mortgage on April 16, 1931. By reason of the defaults under the Trust Deed securing the bonds of The Sovereign issue, the Trustee under that issue declared the interest and principal of all such bonds to be due and payable and on May 27, 1931, filed a bill to foreclose the first mortgage. Decrees of foreclosure have been entered by the Court in both instances and dates will soon be fixed in accordance with the law for the sales of the mortgaged buildings, at which sales the buildings will be sold to the highest bidder.

Under prevailing economic conditions, it is probable that at the forthcoming foreclosure sales no bid reflecting what the Committees believe to be fair values for the mortgaged properties will be made by outsiders; and, accordingly, the Committees, with the object of protecting the interests of the depositing bondholders and in order to prevent the purchase of the properties at inadequate prices, will probably bid in both mortgaged properties for the benefit of the parties to the joint reorganization of the bond issues. Accordingly, the Following Plan of Reorganization provides that practically the Entire Ownership of the Property Constituting the Security for the Issues Will Go Jointly to the Depositing Bondholders Provided the Property Is Acquired by the Committees or Their Nominees at the Forthcoming Foreclosure Sales. The Committees reserve full discretion to determine the price to bid for the property at the respective foreclosure sales and also to refrain from purchasing same if an offer, which the Committees regard as satisfactory, is made by any other bidders.

Details of Plan of Reorganization.

The following is a summary of the Plan of Reorganization which has been formulated, adopted and approved:

New Company.

A new corporation (hereinafter referred to as the "New Company") organized under the laws of the State of Illinois and having an authorized capital stock consisting of such number of shares of Capital Stock with or without par value as shall be determined by the Committees shall hold title to both property, if and when both properties are acquired at the above mentioned foreclosure sales.

The capitalization of the New Company will consist solely of this issue of Capital Stock, which will be fully paid and non-assessable, and 90% of which will be issued for the benefit of the depositing Sovereign and Sovereign Annex first mortgage bondholders in the manner hereinafter described.

Depositing Bondholders to Receive Benefit of 90% of Ownership of Property.

Capital Stock of the New Company will be issued for the benefit of the depositing Sovereign first mortgage bondholders at the rate of one and one-quarter (1¼) shares of Capital Stock for each One Hundred Dollars ($100) in face amount of bonds deposited; and Capital Stock of the New Company will be issued for the benefit of the depositing Sovereign Annex first mortgage bondholders at the rate of one (1) share of Capital Stock for each One Hundred Dollars ($100) in face amount of bonds deposited. The Capital Stock of the New Company thus issued for the benefit of the depositing Sovereign and Sovereign Annex bondholders will amount to ninety per cent (90%) of the total Capital Stock issued. The remaining ten per cent (10%) of the Capital Stock of the New Company will be issued for the benefit of the Receiver for S. W. Straus & Co. and to said affiliated company in satisfaction of various advances made by them, both subordinated and unsubordinated, aggregating approximately $396,900.00, and for making title to the properties available under this Plan, thereby substantially shortening the time required to effect the reorganization. All shares of the Capital Stock

will be deposited under a trust agreement and Trust Certificates issued therefor as hereinafter set forth.

Before determining the division of the Trust Certificates between The Sovereign and the Sovereign Annex bondholders respectively, the Committees considered the relative size of the outstanding bond issues, the location and size of the properties, the dependence of the properties one upon the other, their respective earning capacities, in addition to other matters deserving of consideration. The Committees are of the opinion that the division between the two classes of bondholders is a reasonable one and that the joining of the two properties in one capital structure will be for the permanent benefit of all the bondholders.

Trust Agreement.

It is of vital importance that after the bondholders become the owners of the property, they be properly organized and in position to benefit from unity of control and centralized supervision of the operations of the property and its financial policies. In order to establish this necessary central point of authority, all of the shares of the Capital Stock of the New Company will be deposited under a Trust Agreement and Trust Certificates issued therefor.

The Trust will endure for a period of ten years, but will be subject to termination prior to the expiration of this period by the action of a majority of the Trustees or by the holders of sixty-six and two-thirds per cent (66-2/3%) in amount of the outstanding Trust Certificates for Capital Stock. There will be three Trustees who will serve on behalf of the holders of the Trust Certificates, and Messrs. George W. Rossetter, Jay C. McCord and Sidney H. Kahn will serve in this capacity. The reasonable expenses and fees of the Trustees and of the Depositary and Agent for the Trustees will be paid by the New Company and will be regarded as operating expenses thereof.

In the event that during the period of the Trust a reasonable offer should be received for the sale of the property, the terms of any such sale will be submitted to the holders of the Trust Certificates by the Trustees. In the event that the holders of one-third or more in principal amount of the then outstanding Trust Certificates dissent in writing from any such proposal, the proposal for the sale of the property on the terms submitted will not be consummated.

New Securities.

When the Reorganization becomes operative and the New Securities Are Prepared, All Holders of Certificates of Deposit Will Be Advised by the Committee.*

The holder of a Certificate of Deposit representing a deposited $1,000 Sovereign First Mortgage Bond will be entitled to a Trust Certificate for Twelve and One-half (12½%) shares of the Capital Stock of the New Company; the holder of a Certificate of Deposit representing a deposited $500 Sovereign First Mortgage Bond will be entitled to a Trust Certificate for Six and One-quarter (6¼) shares of the Capital Stock of the New Company, and the holder of a Certificate of Deposit representing a deposited $100 Sovereign First Mortgage Bond will be entitled to a Trust Certificate for One and One-quarter (1¼) shares of the Capital Stock of the New Company.

The holder of a Certificate of Deposit representing a deposited $1,000 Sovereign Annex First Mortgage Bond will be entitled to a Trust Certificate for Ten (10) shares of the Capital Stock of the New Company; the holder of a Certificate of Deposit representing a deposited $500 Sovereign Annex First Mortgage Bond will be entitled to a Trust Certificate for Five (5) shares of the Capital Stock of the New Company, and the holder of a Certificate of Deposit representing a deposited $100 Sovereign Annex First Mortgage Bond will be entitled to a Trust Certificate for One (1) share of the Capital Stock of the New Company.

Possible Future Financing.

It appears that the funds arising from the operation of the property accumulated in the hands of the Trustees and apportionable to the deposited bonds will not be sufficient to pay taxes and all expenses of foreclosure and reorganization. Accordingly, it may be advisable in order to discharge all such items properly, if the earnings of the property im-
19 prove, to place a first mortgage on the property and utilize the proceeds of such a loan for application against taxes and the unpaid portion of the expenses of foreclosure

* Persons who now hold Certificates of Deposit for either The Sovereign or the Sovereign Annex bonds need not take any action at this time if they assent to the Plan, but should continue to hold their Certificates until receipt of further advice from the Committees.

and reorganization. By this means, the early earnings of the property would become available for distribution on the new securities to be issued to the depositing bondholders without the necessity of waiting until such time as the earnings of the property will have been sufficient to pay these items. It should be borne in mind that the taxes and the unpaid expenses of foreclosure and reorganization constitute prior liens on the property regardless of whether or not any first mortgage loan is obtained; and, therefore, the placing of a first mortgage loan on the property, as contemplated, will not alter the relative position of the depositing bondholders and has the desirable feature of enabling the New Company properly to fund its indebtedness. The amount of any first mortgage loan which would be placed against the property would be relatively small and consistent with the earnings of the property.*

In the event that the New Company is unable to arrange a loan for the purposes of paying taxes and the expenses of foreclosure and reorganization, the first income of the New Company and the property will be applied against any such unpaid items before any funds will be made available for distribution on the Trust Certificates to be issued.

Management.

During the period of the Trust, the management and operation of the property will be under the supervision of Directors elected by the Trustees and reports concerning operations and activities will be made to the holders of the Trust Certificates periodically.

Reorganization Expenses.

The share of depositing bondholders in the net proceeds derived from the operations of the property by the Trustees (which at the present time amounts to about $11,500.00) and the net proceeds of any first mortgage loan, if obtained, will be used to defray cash payments required to be made on account of the expenses of foreclosing the bond issues, past due and accrued taxes and expenses of reorganization; and

* No commitment for such a loan has been received; however, it is expected that the New Company may be able to obtain such a loan when and if the plan becomes operative and the property has been acquired by it. No loan will be applied for until the earnings improve sufficiently to warrant one.

arrangements have been made for the payment of any of the remaining unpaid expenses of foreclosure and reorganization by the New Company out of its first earnings. Moneys from the sources above described in addition to such amounts as will accumulate prior to the consummation of the reorganization applicable to the deposited bonds and such other funds as may become available to the Committees, and/or such portion of the net earnings of the New Company as may be required, will be distributed as follows: (a) Cash payments required to be made by the Committees in part payment of the foreclosure sale price of the issues; (b) Unpaid and accrued (not billed) taxes; (c) Cost of postage, telegrams, stationery, printing and all other expenses incurred by the Committees or their representatives, in addition to an amount equal to 1½% of the face amount of bonds deposited which the Committees have agreed to accept to meet the general expenses and compensation for the Committees; (d) Costs of the issuance of the new securities, including printing, engraving, title examination charges, qualification costs, stamp taxes, recording costs, cost of registration, etc.; (e) Charges of the Depositary for the Committees at the rate of ¾ of 1% of the face amount of bonds deposited, plus the out-of-pocket expenses of the Depositary; (f) Attorneys' fees, Trustees' fees and other court costs in connection with the foreclosure proceedings. The fees for the attorneys for the Trustees in the foreclosure proceedings of both issues as allowed by the Court at the time the decrees were entered, aggregated $44,250.00. At the request of the Committees, however, the attorneys have consented to reduce the fees to $20,000.00, of which $16,000.000 remain unpaid. The Trustees' fees amount to $3,500.00 in the case of The Sovereign and to $4,000.00 in the case of the Sovereign Annex, and compensation for counsel for the Committees has been fixed at $7,000.00.

Amendments to Deposit Agreements.

In order that the bondholders might gain the benefits of representation by independent business executives who had no connection with the underwriting house, it was deemed advisable to effect substitutions in the membership of these Committees. The personnel of the Committees is identical and consists of: Mr. George W. Rossetter, President Geo. W. Rossetter & Co., Certified Public Accountants, Chicago, Illinois, Chairman; Mr. Jay C. McCord, President J. C. Mc-

Cord & Company, real estate, Chicago, Illinois, in addition to Mr. Sidney H. Kahn, a former executive of the underwriting house.

The Committees found that by reason of the substitutions in the membership and the time which has been and will be required in the reorganization, they could not continue to function on the basis contemplated at the time of their formation, and, therefore, it has been necessary to amend the respective Deposit Agreements to meet this exigency. Accordingly, the Committees, pursuant to Section 3 of Article II of the Deposit Agreements, passed resolutions amending paragraph one (1) of Section 4 of Article II of the Deposit Agreements and deleting Section 9 of Article VIII of the Sovereign Annex Deposit Agreement to provide that the members of the Committees, in addition to receiving all expenses, should receive reasonable compensation for the services rendered by them.

Depositing Bondholders.

Under the Terms of the Deposit Agreements Dated January 23, 1931, and April 21, 1931, Respectively, Depositors who Assent to the Plan of Reorganization and the Amendments to the Deposit Agreements Need Take No Action, But Should Continue to Hold Their Certificates of Deposit and Not Forward Until Advised So to Do by the Committees. Any depositor of a Sovereign or Sovereign Annex bond who dissents from the Plan of Reorganization or the amendments to the Deposit Agreements must, within thirty (30) days after the date of the mailing of this notice of adoption and filing of the Plan of Reorganization and the summary thereof, send to American National Bank And Trust Company Of Chicago (formerly known as Straus National Bank And Trust Company Of Chicago):

(1) A written notice of dissent;

(2) A remittance to the Committees for their expenses;

(3) Certificate of deposit duly endorsed, with a bank guarantee of indorsement satisfactory to the Depositary.

Unless such action is taken, it will be conclusively presumed that you have approved, adopted and assented to the Plan of Reorganization and the Amendments to the Deposit Agreements. Any depositor who dissents from the Plan of Reorganization or the Amendments to the Deposit Agreements has the right to withdraw his or her bonds heretofore

deposited, upon the payment to the Committees of three per cent (3%) of the face amount of bonds deposited, which is in accordance with the terms and conditions provided in Section one (1) of Article IV of the Deposit Agreements. However, such withdrawals will not be permitted unless the conditions above set forth are complied with within thirty (30) days after the mailing of this notice. The above mentioned payment covers the depositors' proportionate share of the Committees' expenses to date and will amount to Three Dollars for a Hundred Dollar ($100.00) par value bond; Fifteen Dollars for a Five Hundred Dollar ($500.00) par value bond; and Thirty Dollars for a One Thousand Dollar ($1,000.00) par value bond.

Non-Assenting Bondholders.

Non-Assenting Bondholders Will Be Entitled Only to Their Proportionate Share of the Foreclosure Price of the Property on Which They Hold a Bond and Accrued Income, Minus Their Proportionate Share of the Expenses for Foreclosing Such Issue. In the opinion of the Committees, the amounts to be received by the nonassenting bondholders will be less than the value of the securities to be received by the depositors.

Bonds Not Yet Deposited.

Holders of the Sovereign or the Sovereign Annex First Mortgage Bonds Who Have Not Deposited Same with the Depositary of the Committees May Do So Until the Close of Business on August 12, 1933, and by Doing So May Share in the Benefits of the Plan of Reorganization as Depositors. All persons who deposit their bonds on or after July 14, 1933, will be deemed to have assented to and approved the Plan of Reorganization and Amendments to the respective Deposit Agreements and will not be entitled to the rights of withdrawal upon the terms and conditions hereinabove set forth. The Committee Has Established August 12, 1933, as the Final Date for Deposit of Bonds.

Bondholders who have disposed of their bonds are requested to write to the Secretary of the Committees, giving the name and address of the party to whom the bonds were transferred so that a copy of this communication may be sent to the present holder.

General.

The above statements are based upon reports and other information received by the Committees and are believed to be correct. Said statements and figures are not intended and shall not be construed as representations or warranties, and are not guaranteed by the Committees.

The Plan of Reorganization and the Amendments to the Deposit Agreements have been adopted by the respective Committees and copies thereof filed with the Depositary. Notice of the adoption and filing of this Plan of Reorganization and the Amendments to the respective Deposit Agreements is given pursuant to the provisions of the Deposit Agreements dated January 23, 1931, and April 21, 1931, respectively, and with the effect therein provided.

Summary.

In the opinion of the Committees, the Plan of Reorganization should result in the following advantages to the depositing bondholders:

1. The depositing bondholders will become the owners of Trust Certificates representing 90% of all of the outstanding stock of the New Company which will own the entire property mortgaged under both bond issues;
2. As owners, the amounts of future distributions to be received by the depositing first mortgage bondholders will be limited only by the actual earnings of the property;
3. The depositing first mortgage bondholders will be in position to receive the benefits which should accrue to the owners of a well located property enjoying prospects of an improvement in earnings when there is an upturn in general business conditions;
4. The Plan will result in a consolidation into a single financial structure of the two buildings, which of necessity have been and must be operated as a single unit; and the financial structure of the New Company owning the buildings will be highly flexible, enabling depositing bondholders to take such action in the future as may become advisable;
5. By means of a Trust, provision is made for the centralized supervision of the operation and management of the property for the depositing bondholders.

It is hoped that by speedily effecting the Plan of Reorganization summarized herein, provision can be made thereby for the discharge of the delinquent taxes on the property through arranging financing after the Plan has become operative and earnings improve, and that thereby a receivership of the property on account of tax delinquencies may be averted.

The Committees recommend that bondholders who have not as yet deposited their bonds of these issues avail themselves of this opportunity to obtain the benefits of the reorganization by immediately depositing and thereby entitling themselves to receive their portion of the ownership of the property, as provided in the Plan.

Very truly yours,
GEORGE W. ROSSETTER, *Chairman*
JAY C. MCCORD
SIDNEY H. KAHN
The Committees

Dated, Chicago, Illinois, July 13, 1933.

EXHIBIT "A"

The Sovereign and the Sovereign Annex (Chicago, Illinois)

Statements of Income and Expense, computed on an accrual basis, for the Year Ended December 31, 1931; for the Year Ended December 31, 1932; and for the Five Months Ended May 31, 1933.

(These statements, with the exception of taxes and interest requirements, have been taken from reports of the Trustees' operations prepared by Arthur Young & Company, Accountants and Auditors, W. J. Forster & Company, Accountants and Auditors, and Horwath & Horwath, Accountants and Auditors, for the respective periods. The Committees believe the statements to be substantially correct; however, they make no representations in respect thereto and do not in any manner guarantee the accuracy thereof.)

Income.

	Year Ended 12/31/31	Year Ended 12/31/32	Five Months Ended 5/31/33
Rents, Minor Operated Departments, Etc.	$267,407.79	$206,782.58	$ 79,909.43
Operating and Unapportioned Expenses			
Administration and General	$ 36,037.02	$ 30,453.31	$ 11,523.61
Advertising and Promotion	11,847.23	16,149.66	6,246.01
Engine Room (Heat, Light and Power)	47,083.06	43,425.57	17,182.00
Maintenance	23,153.42	30,884.11	8,846.85
Rooms	63,946.08	54,548.33	19,827.14
Reserve for Bad Debts	3,000.00		1,250.00
Insurance	3,014.02	6,532.98	1,457.77
Total Expenses	$188,080.83	$181,993.96	$ 66,333.38
Operating Profit	$ 79,326.96	$ 24,788.62	$ 13,576.05
Real Estate Taxes for the Period (1932 and five months of 1933 estimated	$ 31,386.52	$ 28,750.00	$ 8,541.65
Surplus Before Present First Mortgage Interest Requirements	$ 47,940.44	$ 3,961.38D	$ 5,034.40
Interest and 2% Normal Tax (on the present outstanding bond issue)	$ 88,097.40	$ 88,097.40	$ 36,707.25
Deficit (on basis of interest requirements under old issue without giving effect to the attached Plan)	$ 40,156.96D	$ 92,058.78D	$ 30,672.85D

D—Deficit

Feb. 13, 5. 42 And on, to wit, the 13th day of February, 1935 came the Debtor by its attorneys and filed in the Clerk's office of said Court a certain Answer in words and figures following, to wit:

43 IN THE DISTRICT COURT OF THE UNITED STATES.

* * (Caption—58701) * *

ANSWER OF KENMORE-GRANVILLE HOTEL COMPANY, A CORPORATION, TO THE PETITION OF J. GOLD, R. SANDROFF AND S. ISENBERG.

Now comes Kenmore-Granville Hotel Company, a corporation, the above named debtor, and for answer to the petition of J. Gold, R. Sandroff and S. Isenberg filed herein pursuant to the provisions of Section 77-B of the Act of Congress entitled "An Act to Establish a Uniform System of Bankruptcy Throughout the United States", approved July 1, 1888 and Acts amendatory thereof and supplementary thereto, states:

(1) The debtor admits the allegations contained in paragraphs numbered 1 to 12, both numbers inclusive, and paragraphs 15 to 17, both inclusive.

(2) The debtor admits that a joint plan of reorganization of the financial structure of this debtor's property has been formulated and adopted by the Bondholders' Committees, described in paragraph 12 of said petition, and that Exhibit "F" attached to said petition is a copy of the notice and

44 summary of said plan which was sent to the owners of first mortgage bonds secured by the property of this debtor on or about July 13, 1933.

(3) The debtor admits that said plan of reorganization must be modified and amended in order to conform to the provisions of Section 77-B of the Bankruptcy Act, as amended, but this debtor neither admits nor denies that the suggested modifications and amendments contained in paragraph 18 of said petition will be acceptable to the creditors of this debtor and this debtor reserves the right to propose suggested amendments and modifications to said plan looking toward the fairest and most equitable determination of the rights of every class of creditors and the stockholders of this debtor.

(4) This debtor neither admits nor denies that Exhibits "A" and "B" attached to said petition and incorporated in paragraph 14 constitute an accurate and complete reflection of its financial condition, but admits that Thomas D. Nash,

County Treasurer and Ex-Officio County Collector of Cook County, Illinois, was, on to-wit, August 14, 1934, appointed tax receiver for the property of this debtor in a proceedings then pending in the Circuit Court of Cook County, Illinois and known and docketed therein as case No. 34-C-13891; that the debtor is informed and believes that Robert M. Sweitzer, as the presently elected and constituted County Treasurer and Ex-Officio County Collector of Cook County, Illinois, has been substituted as such tax receiver for Thomas D. Nash, whose term of office has heretofore exp[illegible]ed.

(5) The debtor desires that a reorganization of this
45 corporation be effected under the provisions of Section 77-B of the Bankruptcy Act and desires to have the joint plan of reorganization, heretofore formulated and adopted by said Bondholders' Committees, or such amendments and modifications thereof as may be accepted to all parties in interest, submitted to this Honorable Court at an early date in order that any such plan so proposed may be consummated herein under the powers and authority conferred upon this court by Section 77-B of the Bankruptcy Act, as amended, within an early date.

KENMORE-GRANVILLE HOTEL COMPANY,
By EDWARD R. HEINSIMER,
Its President.

(Corporate Seal)
MAX FREDERICK GOLDBERG,
Attorney for Debtor.

State of Illinois, } ss.
County of Illinois. }

EDWARD R. HEINSIMER, being first duly sworn, on oath deposes and says that he is the President of the Kenmore-Granville Hotel Company, a corporation, debtor herein, and that he is the duly authorized agent of the debtor and was duly authorized on its behalf to execute the above and foregoing answer; that he has read the said answer, knows the contents thereof and that the statements contained therein are true and correct according to his best knowledge, information and belief.

EDWARD R. HEINSIMER.

Subscribed and sworn to before me, a Notary Public, this 13th day of February, 1935.

FREDERICK J. MANN,
Notary Public.

(Seal)

My Commission expires March 13, 1938.

13. 46 And afterwards, to wit, on the 13th day of February, 1935, being one of the days of the regular February term of said Court, in the record of proceedings thereof, in said entitled cause, before the Honorable John P. Barnes, District Judge, appears the following entry, to wit:

47 IN THE DISTRICT COURT OF THE UNITED STATES.

* * (Caption—58701) * *

ORDER.

This cause coming on to be heard on the motion of Tarnopol, Flamm & Sideman, attorneys for the petitioning creditors of the above named debtor, and upon the petition of said petitioning creditors, heretofore filed herein, and upon the answer of the debtor herein, due notice having been given, and debtor appearing by counsel; and the said motion and petition and the statements of the respective counsel having been considered by the Court, and the Court being satisfied that said petition complies with Section 77-(b), Chapter VIII of the Act of Congress of July 1, 1898, entitled "An act to establish a uniform system of bankruptcy throughout the United States" as amended, and has been filed in good faith,

It Is, Therefore, by the Court, Ordered:

1. That said creditors' petition be and it hereby is approved as properly filed under Section 77-(b) of said bankruptcy act as amended.

2. That until the further order of this Court, all creditors of Kenmore-Granville Hotel Company, the debtor herein, and their agents and attorneys, or either or any of them, be and they each hereby are restrained and enjoined from commencing or prosecuting any action or proceeding, at law or in equity, against the said debtor for the purpose of enforcing any lien or claim on the property of the debtor, or any part thereof, or interfering with, attaching, levying upon, or in any manner whatever disturbing the operation of the property of the debtor, or from taking possession of or in any manner interfering with the same, or any part thereof.

3. That Thomas D. Nash, County Treasurer, and ex officio County Collector, of Cook County, heretofore appointed as Receiver of the property of the debtor in a proceeding in the Circuit Court of Cook County, Illinois, docketed therein as Case No. 34-C-13891, is hereby authorized to continue in possession until the further order of this Court.

48 4. That a hearing be, and the same hereby is set before the Court for the 13th day of March, A. D. 1935, at 10:00 o'clock in the forenoon, at which hearing, or any adjournment thereof, the Court will determine whether or not it shall appoint a Trustee or Trustees or restore the debtor to possession.

5. That George W. Rossetter, Jay C. McCord, and Sidney H. Kahn, constituting the Sovereign Annex First Mortgage Bondholders' Committee and the Sovereign First Mortgage Bondholders' Committee, be, and they hereby are given leave to intervene herein and to file their intervening petition within ten days, and all parties herein are hereby ordered to answer said intervening petition within ten days thereafter.

6. That said George W. Rossetter, Jay C. McCord and Sidney H. Kahn, constituting the Bondholders' Committees on said properties as aforesaid, notify all creditors and stockholders, whose names and addresses are known to them, by mail of said hearing at least ten days before the date thereof, and cause a notice of said hearing to be published once a week for two successive weeks in a newspaper of general circulation published in Chicago, Illinois.

7. The Court retains jurisdiction for the purpose of maintaining or supplementing this order as may be required from time to time.

Enter:

BARNES,
Judge.

Feb. 13, 1935.

49 And on, to wit, the 25th day of February, 1935, came the Petitioner by her attorneys and filed in the Clerk's office of said Court a certain Petition in words and figures following, to wit: Filed Feb. 1935.

50 IN THE DISTRICT COURT OF THE UNITED STATES.

* * (Caption—58701) * *

PETITION OF NETTIE MEYER.

Petitioner, Nettie Meyer, respectfully shows:

I. That heretofore the certain alleged creditors of the debtor filed their petition in this cause for reorganization

under Section 77b, as it more fully appears from the petition now on file.

II. That prior to the approval of the petition, this petitioner had exhibited her complaint in the Superior Court of Cook County, charging therein, among other things, that the Kenmore Granville Hotel Corporation was not a bona fide corporation, but was a mere "dummy", and organized for the purpose of defrauding the bond owners, and it also sought to hold the trustees and the alleged Bondholder's Committee liable for fraud, and sought an accounting, receiver and injunction, as it more fully appears from the complaint filed in the Superior Court of Cook County in the case entitled "Nettie Meyer vs. Kenmore Granville Hotel Corporation, et al, case number 35 S 2153, a copy of the bill of complaint, exclusive of certain exhibits attached thereto, is in words as follows, to-wit:

51 State of Illinois, } ss:
County of Cook. }

IN THE SUPERIOR COURT OF COOK COUNTY.

In Chancery.

Nettie Meyer, *Plaintiff,*
vs.
Kenmore Granville Hotel Corporation, *et al,* *Defendants.*
} No. 35 S 2153.

COMPLAINT.

Nettie Meyer, plaintiff, complains of the defendants, Sovereign Hotel Corporation, Kenmore Granville Hotel Corporation, American National Bank and Trust Company of Chicago, Wholesale Merchandisers, Inc., Sidney H. Kahn, Melvin L. Straus, Arthur W. Straus, Samuel J. T. Straus, M. A. Rosenthal, Frederick W. Straus, William R. Heinsimer, Edward R. Heinsimer, Charles J. Beck, Nathan H. Oglesbee, Joseph D. Blosser, Mabel Strickrod and Robert M. Sweitzer, as County Treasurer, and says:

(1) That prior to November 1, 1919, and thereafter S. W. Straus & Co., a corporation, had organized a co-partnership

under the name of S. W. Straus & Company for the pupose of aiding it in underwriting bond issues and selling them to the public, and designated Samuel J. T, Straus and Sidney H. Kahn, two of its officers, as the members of the co-partnership; that the corporation and the co-partnership, its instrumentality, were engaged in the business of procuring and selling real estate first mortgage bond issues on properties which were under construction in the various States in this County. For the purpose of deriving large gains and profits and to deceive the general public and to confuse them by manipulation hereafter states, they caused to be organized a holding company under the name of S. W. Straus & Co., a Delaware corpo-
52 ration, and subsidiary companies under the name of S. W. Straus & Co., an Illinois corporation, and similar corporations under the same names in the states of New York, Massachusetts, Maryland, California and Pennsylvania, all working in the interest of the company; that the said company and the Illinois corporation, hereafter referred to as "Corporation" were doing business in this state in making loans secured by bond issues on buildings under construction for the purpose of procuring for themselves and for their individual interests and the interest of the officers and directors large profits deducted from the loans made by them in the form of commissions, financing and by acquiring such mortgage loans to be deposited in a bank wherein they were financially interested, and to procure insurance from companies which paid them commissions and by requiring that the buildings be erected by building contractors selected by them and wherein they were financially interested.

(2) In connection with their scheme to enrich themselves at the expense of the bond investors they maintained (1) a sales department, (2) a loan department, and (3) a trust department.

The loan department would solicit owners of vacant land to organize corporations for the purpose of improving the vacant land and to apply for a loan underwritten by the Company at a commission of approximately ten per cent (10%) or larger, and thereafter the Company would sell the bond issue to the Corporation at a discount and such Corporation would sell the bonds to the public at par and the sale from the Company to the Corporation was merely by bookkeeping entries, as
53 no money passed between them. Thereafter the sales department would send out agents and salesmen and employees throughout the United States, soliciting the purchase

of such bonds by advertisements, orally and in writing, and they would represent to the bond purchasers that the Company was engaged in the business conservatively investing the money of its investors in property which was greatly in excess of the bonded indebtedness, and in many instances they would state in the circulars "We regard our interests as identical with the interests of our clients; we represent the investor and not the borrower"; and that the Corporation was at all times behind its issued and would at any time pay back the bonds at a discount of one per cent (1%) which was accrued interest, and that the Corporation was always engaged in first mortgage bonds.

(3) That among the representations that were made to the bond investors it was stated as follows:

"Straus Bonds

By careful study and specialization, over a period of 42 years, S. W. Straus & Co. has developed the largest national organization of its kind, specializing in bonds secured by office buildings, apartments, hotels, industrial properties and warehouses in the larger cities.

Each property is suited to its location; busy corners and proximity to labor supply for the mercantile and industrial; natural beauty and convenience for the residential.

Surrounded by a chain of safeguards known as The Straus Plan, each bond issue underwritten by this House has been made to contain every element of safety.

How well we have served our tens of thousands of clients can best be judged by our record,—Forty-two Years Without Loss to Any Investor."

54 (4) Under the heading "Straus Service" it stated in its circulars and pamphlets:

"This House, despite its great expansion over a period of years, has not lost touch with the needs of the individual investor, as so often happens when an institution becomes very large, but has built up its service departments to such an extent that it is now in closer touch with its clients than ever before.

We recognize that an investment house has other obligations to its clients than the safeguarding of securities. We act as an adviser along both the lines of investment and income tax. Our collection department is equipped to make collections on all coupons and bonds of other issues in addition to those underwritten by S. W. Straus & Co. To save our clients any unnecessary trouble and annoyance, they are encouraged to clip all coupons coming due during a current year and mail

them to us at one time. We then issue a receipt and remit as these coupons become due. Our safekeeping department enables the investor to receive without charge, services similar to those rendered by a trust company, as the coupons are clipped each month and checks mailed promptly."

(5) Under the heading "Our Duty to Our Clients" it stated:

"In addition to the aforementioned services there is still another—the most important of all.

We believe that our task is not ended when we have underwritten an issue and marketed the bonds. Every possible precaution is taken during the life of these securities to maintain them in the same attractive position in which they were when offered to the public.

Too much emphasis cannot be laid upon the amortization and monthly payment features, both of which are integral parts of the Straus Plan. Under the Straus Plan, the borrower, as soon as the mortgage is made, must immediately pave the way for the paying off of the debt. In our opinion the liquidation of the mortgage through earnings is the most vital necessity of a good loan. We do not consider the financing of a first mortgage bond issue which cannot in itself show net earnings sufficient not only to pay interest charges, but also to pay off an average of about 5% of the principal each year."

(6) That upon these representations and having implicit confidence in S. W. Straus & Co. and their officers and directors, complainants and other purchasers have invested
55 money in the securities sold by it.

(7) That in the course of its business as aforesaid said defendants have caused to be floated a bond issue of $1,000,000, November 1, 1919 on the property known as the Sovereign Hotel, which bond issue was executed by a corporation known as the Sovereign Hotel and Building Corporation, for the purpose of erecting a building on the vacant land described as follows:

Lots 11 and 12 in Block 6 in Cochrane's Second Addition to Edgewater in Section 5, Township 40 North, Range 14, East of the Third Principal Meridian, in Cook County, Illinois.

That the bond issue was payable in installments of:

$20,000. November 1st, 1921;
30,000. November 1st, 1922;
40,000. November 1st, 1923;
40,000. November 1st, 1924;
45,000. November 1st, 1925;

and $50,000. thereafter annually, with final payment of $575,000. on November 1st, 1931, bearing interest at six per cent (6%) per annum payable semi-annually, which bond issue was secured by a trust deed of Arthur W. Straus, one of the officers of said S. W. Straus & Co., filed of record in the office of the Recorder of Deeds of Cook County, Illinois, as Document Number 6699724, reference being had to this trust deed as if same were incorporated herein; that thereafter the Sovereign Hotel Corporation was organized and the title to the property was conveyed on July 29, 1922 to this new corporation which assumed the mortgage debt by a deed of conveyance recorded in the office of the Recorder of Deeds as Document No. 7594107, and that all of the goods and chattels located in said hotel were pledged as additional security by the original mortgagor and by the new corporation
56 which executed a new chattel mortgage.

(9) At about the time when the Sovereign Hotel Corporation was organized another bond issue of $1,000,000. was floated by the defendants dated August 1st, 1922, for the purpose of constructing a building adjacent to the first building known as the Sovereign Hotel Annex, which bond issue was dated August 1st, 1922, and was payable:

$20,000 February 1st, 1925	$44,000 February 1st, 1931
30,000 February 1st, 1926	46,000 February 1st, 1932
34,500 February 1st, 1927	48,500 February 1st, 1933
37,000 February 1st, 1928	51,000 February 1st, 1934
39,000 February 1st, 1929	53,000 February 1st, 1935
41,500 February 1st, 1930	55,500 February 1st, 1936

$56,000 February 1st, 1937

and $442,000. August 1st, 1937, bearing interest at six per cent (6%) per annum, secured and described by a trust deed to Melvin L. Straus, another officer of S. W. Straus & Co. filed of record in the office of the Recorder of Deeds as Document No. 7717203, conveying therein the following described premises:

The south thirty-seven and one half (37½) feet of Lot Eight (8), all of lots nine (9) and ten (10) in Block six (6) in Cochran's Second Addition to Edgewater, said Addition being a subdivision of the East fractional half (except the West 1,320 feet of the South 1,913 feet thereof) of Section five (5), Township forty (40) North, Range fourteen (14) East of the Third Principal Meridian.

(9) That plaintiffs have purchased the bonds hereunder

on the foregoing issues and are now the legal holders and owners thereof.

(10) That the building on which the bond issue was first floated will be hereafter designated as "Sovereign" and the building on which the second bond issue was floated will be designated as "Annex".

Said Sovereign consists of a ten story fireproof apartment hotel building, containing one hundred twenty-six (126) units of one, two and three rooms and is located on the north-
57 west corner of Kenmore and Granville Avenues, Chicago, Illinois. Said Annex is a ten story fireproof apartment hotel building containing one hundred ninety-eight (198) furnished hotel rooms and is immediately adajcent to and directly connected with the Sovereign.

(11) The Sovereign and Annex are operated as a single unit and together they form one residential hotel and are being conducted and operated by the same management and said Annex forms an integral part of the Sovereign.

(12) That for the purpose of enabling them to raise funds to construct the building they caused to float a junior bond issue at about the same time when the first mortgage bond issue was floated on the Annex, and the said Sovereign Hotel Corporation executed its trust deed to the Chicago Title and Trust Company, as Trustee, dated November 11, 1922 and recorded as Document No. 7728289 securing the junior bond issue of $250,000.00.

(13) That both bond issues on the Sovereign and Annex were in default since 1925, but such defaults were concealed from the plaintiffs and the other bond owners and the trustees named in the several bond issues entered into physical possession of said Sovereign and Annex on May 8, 1925, and continued to remain in possession thereof until August 14, 1934, but when the interest payments and serial maturities of the bonds matured from time to time same were paid by the corporation, which was the paying agent, and the facts that the issues were in default and that the Trustees were in possession thereof were not revealed to the bond investors.

58 (14) That thereafter the officers and directors of S. W. Straus & Co. and the members of S. W. Straus & Company, caused to institute foreclosure proceedings on the junior bond issue in the Superior Court of Cook County in the cause entitled "Chicago Title and Trust Company vs. Sovereign Hotel", case No. 483219, which bill of Complaint

was filed on August 17, 1928, and that thereafter they procured a Decree of foreclosure and sale, and the premises were sold under the Decree to Sidney H. Kahn, an officer and director of S. W. Straus & Co., and a co-partner of S. W. Straus & Company, and a Master's Deed was issued to him on March 23, 1931, and he thereby became the record owner of the title, but in reality no money was paid by him for the purchase of the premises at the sale, and that the purchase by him in his individual name was in order to conceal the facts that the company which floated the bond issue acquired the property at its own foreclosure, and that this was done in order to enable the company and the house, and their officers and agents to maintain the reputation of the house and to be in a position to advertise that their bond issues were in good standing in the manner and form as above stated, and that the whole proceedings were initiated with the aim of obtaining the income of the property and to apply it in payment of bonds and coupons as they mature without informing the bond owners of such facts, and that same was fraudulent.

(15) During said period the two trustees were in possession of the two properties since May 8, 1925, because of the existing defaults under the mortgage indebtedness, and while they had acquired the title ostensibly in the name of Sidney H. Kahn, but in reality for S. W. Straus & Co., the said S. W. Straus & Co., through its officers and agents, mailed a communication to the bond owners dated January 24, 1931, advising them in the letter that in connection with the Annex there has been deposited with it by the mortgagor $9,375.00 towards the payment of the interest amounting to $25,-
59 935.00 which will mature on February 1st, 1931 and no provision was made for the payment of the bonds in the amount of $44,000. which will be due on said date, and that the financial structure of both the Sovereign Hotel and the Sovereign Annex requires reorganization; that by this letter the bond owners were advised for the first time that the property was acquired by S. W. Straus & Co. in the junior mortgage foreclosure proceeding, but it was stated in that letter that this was done in order to protect first mortgage bondholders on both properties", and in order to facilitate the reorganization for the protection of the bondholders' interest a Bondholders' Committee was appointed consisting of Sidney H. Kahn and other active officers of S. W. Straus & Co., and the bond owners were urged to deposit their bonds with the Straus National Bank and Trust Company of Chi-

cago, another institution controlled by the defendants, as it more fully appears from the letter dated January 24, 1931, which is in words as follows, to-wit:

60 (16) That the bondholders were not informed in that communication, nor in any other communications previous to that, that the bond issue was in default since 1925 and that the Trustees were in the physical possession of such properties, but such facts were continued to be concealed from them.

(17) That thereafter two foreclosures were instituted by the Trustees of the two bond issues, the one of the Annex was filed April 16, 1931 in the Circuit Court of Cook County in Case No. B-218773 entitled Samuel J. T. Straus, as Trustee, vs. Sovereign Hotel Corporation, and the foreclosure on the Sovereign was filed April 27, 1931 in Case No. B-219230, entitled Melvin L. Straus, as Trustee, vs. Sovereign Hotel, in the Circuit Court. That no bond owners were made parties to any of the proceedings and the Trustees represented to the Court in each proceeding that the bond owners were unnecessary parties and that there was no conflict of interest between the bond owners and the Trustees.

(18) That foreclosure decrees were entered in both cases; the decree in the Annex foreclosure was entered January 13, 1932 and the decree in the Sovereign foreclosure was entered February 19, 1932. That the decree in the Sovereign Finds:

1. That the material allegations of the bills were proven and the equities were with the complainant and that he was entitled to the relief.

2. That the bond issue was duly executed, the trust deed duly made, signed, acknowledged and recorded and the bonds were duly sold to the public; that the new corporation acquired the title and assumed and agreed to pay the mortgage.

3. That Sidney H. Kahn and Nettie Kahn, his wife, were the owners of the premises and their interest was subject to the bond issue.

4. That Melvin L. Straus became trustee under the terms of the trust deed because of the resignation of Arthur W. Straus.

61 5. That the trust deed vested the exclusive right of action in the trustee and he had the right to maintain the action in his own name without making the bond owners parties, there being no conflict of interest.

6. That Bonds Nos. 1 to 90 which matured on and prior

to November 1st, 1926, were paid and cancelled; that all coupons due on and prior to November 1st, 1929, were paid and cancelled.

7. That Bonds Nos. 291 to 360 in the amount of $50,000. matured November 1st, 1927, and $9052.28 was paid on account thereof.

8. That Bonds Nos. 361 to 430 in the sum of $50,000. matured November 1st, 1928, and $27,718.95 was paid thereon.

9. That Bonds Nos. 437 to 505 in the sum of $50,000. were due November 1st, 1929 and $26,781.03 was paid thereon.

10. That Bonds Nos. 506 to 580 in the amount of $50,000. were due November 1st, 1930 and no part thereof was paid.

11. That on May 1st, 1930 Coupon No. 21 in the amount of $18,750. became due and was not paid.

12. That on November 1st, 1930 Coupon No. 2 matured and was not paid, and that there was also default in the payment of the 1928 taxes.

13. The Trustee gave due notice of such defaults to the mortgagor and because of the failure to remedy the defaults within sixty days the trustee declared Bonds Nos. 581 to 1670 aggregating $575,000. and interest thereon immediately due and payable.

14. That all of the bonds Nos. 291 to 580, inclusive and all interest coupons which were due, including up to November 1st, 1930 were taken up and subordinated and owned by S. W. Straus & Co.

(19) On May 8, 1925 the trustee entered into possession because of the then existing defaults and thereafter said Arthur W. Straus, as trustee, surrendered possession to Melvin L. Straus when he succeeded to his duties on May 9, 1929, who is now in possession of the premises; that there
62 was due to the Trustee as a superior lien for his fees the sum of $3500., the fees of his counsel in the amount of $21,005., and for moneys advanced for the 1928 taxes $3500., making a total amount of costs and fees $28,879.43., and there was due to the Trustee as a subordinate lien $618,206.20 for the benefit of the bond owners; and there was due to the Trustee for the benefit of S. W. Straus & Co. as an inferior lien to the above two liens $202,308.22.

The Decree on the Annex after finding that the material allegations of the Bill were sustained and that the complainant was entitled to the relief Found:

1. That Samuel J. T. Straus became successor trustee upon the resignation of Melvin L. Straus, which was duly filed under the terms of the trust deed.

2. That Sidney H. Kahn became the owner of the premises subject to the existing bond issue.

3. That Bonds 1 to 119 which matured on and prior to February 1st, 1927 were paid and all interest due on and prior to August 1st, 1929 was paid.

4. That Bonds 120 to 171 in the sum of $37,000. due February 1st, 1928 were paid on account the amount of $3,551.86.

5. That Bonds 172 to 226 due February 1st, 1929 in the amount of $39,000. were reduced by the payment of $9,919.17.

6. That Bonds 227 to 287 for $41,500. were reduced by the payment of $2050.00.

7. That on February 1st, 1930 Coupon No. 15 in the amount of $27,283.75 matured and $22,736.46 was paid on account.

8. That on August 1st, 1930 Coupon No. 16 in the sum of $25,935. matured and was not paid.

9. That Coupon No. 17 matured February 1st, 1931 in the sum of $25,935. and $9,375. was paid on account thereof.

10. That Bonds 286 to 347 in the sum of $44,000. matured February 1st, 1931 and were not paid.

11. That because of the defaults aforesaid the trustee declared bonds Nos. 348 to 1755, aggregating $754,000. immediately due and instituted the foreclosure proceedings.

63 12. That all of bonds 120 to 285 both inclusive, and coupons 15, 16 and 17 were owned by one Mabel Strickrod and were subordinated.

13. That because of existing defaults in 1927 the trustee entered into possession on May 8, 1925 and is now in possession of the premises.

14. That there was due to the trustee $30,899.51, as a superior lien. for his fees in the sum of $4,000., the sum of $23,000. for the fees of his counsel, $3500. for the advancement of the 1928 taxes and other costs, and there was due to the trustee for the benefit of the bond owners and subject to his lien the sum of $848,931.51, and there was due to Mabel Strickrod on the subordinated bonds the sum of $173,574.34.

(20) The Decree on the Sovereign found that the bond issue was placed under the Act which was then in existence calling for the issuance of a Master's Certificate prior to sale and directed that the Master in Chancery issue to the trustee a certificate of indebtedness for the above amounts and to make a sale of the premises at the expiration of fifteen months from the date of the certificate and that a deed

be issued upon the sale thereof by the Master to the purchaser at such sale.

(21) The Decree on the Annex directed a sale in the event of the non-payment of the amounts due in five days, and provided that if no redemption would be made within the statutory period that a deed be issued to the purchaser, reference being had to both decrees which are now on file in this court and which will be introduced in evidence as EXHIBITS "A" AND "B" and made a part hereof.

(22) Both decrees found that the trustee was in possession since May 8, 1925 and authorized the trustee to remain in possession until the expiration of the period of redemption from the date of the respective sales, and the court
64 retained jurisdiction of the subject matter and it retained jurisdiction for the following purposes:

1. To appoint a receiver of the mortgaged premises upon the application of the complainant.

2. For the administration of the property and for the settlement of the trust accounts.

3. To advise the trustee in connection with his trust duties, as it more fully will appear from the said decrees which are now on file in this court.

(23) Having thus procured the title to the property under their control and the entry of a decree in a proceeding to which the bond owners were not parties and based on their self-serving evidence they thereafter and without first consulting the bond owners and without giving them the opportunity to have their day in court, they thereafter communicated with the bondholders and one communication was mailed to them on March 7, 1932 which revealed to the bond owners for the first time that the foreclosure proceedings were instituted and that decrees were entered and the bond owners were urged to deposit their bonds with the committee in order to protect their interests, as it more fully will appear from the communication, which is in words as follows, to-wit:

65 (30) That on November 14, 1932 another letter was mailed out to the bond owners and the name of Samuel S. T. Straus, one of the trustees, appears as one of the new members of the Committee. The letter states, among other things:

(a) That the management reduced the payroll to the extent of 17% without impairing the operating efficiency of the properties.

(b) That the income for nine months expiring ending September 30, 1932 was $155,640.34 and the expenses $136,033.19, leaving a net profit of $19,607.15 before provision for current taxes amounting to $15,374.97, and cash on hand was $7564.96.

(c) That the unpaid taxes exclusive of the taxes for 1933 plus penalties were $48,500. and the decrease in the cash on hand was due to the payment of foreclosure expenses.

The bondholders were again requested to deposit their bonds with the Committee, as it more fully appears from the letter which is in words as follows:

66 (25) That on July 13, 1933 the Committee addressed to the bondholders a Notice of the Plan of Reorganization. It stated in substance that the trustees were still in possession of the premises for the benefit of the bondholders; that there was due on taxes for 1929, 1930 and one-half of 1931 the amount of $65,500.00 after paying $5417.00 on account of taxes. It further stated that the gross income for the year 1932 was $206,782.58 and the expenses $181,963.96, leaving a net profit of $24,788.62 before the payment of the current taxes amounting to $28,750.00, which would leave a deficiency after paying of taxes for the current year of $3961.38. It stated that the properties could not be reorganized except as a single unit; that no outside bidder should bid at the sale due to the prevailing economic conditions, and that the Committee will probably be the only bidder at the sale; that the Committee worked out a reorganization plan, which is in substance as follows:

(a) A new corporation was to be organized to acquire the property at the foreclosure sale.

(b) Ninety per cent of the common stock to be issued by the new corporation was to be given to the bond owners in lieu of their bonds.

(c) Ten per cent of the common stock will be issued to the Receiver for S. W. Straus & Co. for its interest.

(d) The bondholders of S. W. Straus & Co. will receive 12½ shares for each $1,000 bond.

(e) The bondholders of the Annex will receive ten shares for each $1,000 bond.

(f) The bond owners will receive certificates in lieu of shares and the right to vote will be vested in three members of the Committee designated as Trustees, including one Sidney H. Kahn, an officer of S. W. Straus & Co.

(g) That these trustees be paid their reasonable com-

pensation by the new corporation and the manage-
67 ment will be voted by directors elected by the new trustee.

(h) The committee will receive 1½% of the face amount of the bonds for its compensation, besides the cost for postage, printing, stationery and all other expenses.

(1) The The Depositary will receive the proceeds of the bid at the sale minus all foreclosure expenses.

It was further stated in the Notice that the bond owners who desired to dissent from the Plan and to agree to withdraw their bonds would have to pay three per cent (3%) of the face amount of the bonds in order to so dissent, and those who will dissent and the non-depositors will only receive the proceeds of the bid to be made by the Committee minus all expenses, and their share will be greatly less than the share of the depositors and the time limit to deposit bonds was set as of August 13, 1933, as it more fully appears from the Plan, which is as follows:

68 (26) That in order to coerce the depositors to accept the Plan it was stated in the letter that non-depositors who objected to the Plan were to pay three per cent (3%) of the face amount of the bonds in order to withdraw; that the Committee intended to acquire the property at the lowest bid and the non-depositors would receive the proceeds of this lowest bid and thereby the bond owners were coerced to accept the Plan and to deposit their bonds.

(27) That to accomplish this scheme a corporation was formed under the name of Kenmore-Granville Hotel Corporation and Sidney H. Kahn conveyed his title to the corporation on October 27, 1932 by a deed filed of record as Document No. 11174942; that the incorporators of this corporation were William H. Heinsimer, Charles J. Bech and Edward R. Heinsine, whose office is in the same place where the S. W. Straus & Company was conducting its business and is now being conducted by its successor in business, the Straus Service Corporation, and plaintiffs believe that they are mere dummies, that the entire capital stock consists of 15,000 shares without par value and only $1,000 has been paid thereon, and it is the plan of this corporation to become the owner of the property and to vest the management thereof in the trustees selected by the defendants and the bond owners will have no voice nor vote therein.

(28) That plaintiffs purchased bonds Nos. 1472 and 744 of the foregoing issues about the time they were floated in the market from S. W. Straus & Co., and after receiving the

first letter soliciting them to deposit their bond with the depositary of the Committee they believed in the good faith

69 (29) When plaintiff deposited her bond she was told that this was for the purposes of reorganization, and that this would avoid the foreclosure proceeding, and would protect her interest with the least expense; that no information was given to her thereafter until about March 7, 1932, that the trustee had declared the bond issue due, and that foreclosure proceedings were instituted, and that the property in question was conveyed to a new corporation together with the property of the Sovereign Hotel, which is being operated as one unit, and that all of this was concealed from her, and that she did not know when she purchased the bond on the Sovereign Annex that the property could not be operated as a separate unit, but had to be operated with the Sovereign Hotel as one unit. It was only after the entry of the two decrees of foreclosure on the two bond issues that a letter was mailed to her as well as to the other bond owners dated March 7, 1932, stating therein among other things as follows:

(a) That Melvin L. Straus continued to be in possession of the Sovereign;

(b) That Samuel J. T. Straus continued to be in possession of the Annex;

(c) That $38,000 was spent during the year for repairs and equipment.

(d) That at the request of all of the Committee the Trustee filed foreclosure proceedings and decrees were entered;

(e) That foreclosure and sales were held up pending the formulation of reorganization plans;

(f) That 1929 taxes in the amount of $20,902.93 were unpaid.

(g) That the total income for the year ending December 31, 1931, was $424,988.61 and expenses were $405,018.65 and the net cash on hand was $18,366.61.

The letter urged the bond owners to deposit their bonds and was in words as follows:

70 (32) That when the bonds were deposited with the Depositary of the Committee the bond owners had no knowledge that S. W. Straus & Co. was the real owner of the premises, and if such facts were known they would never have deposited their bonds with the Committee selected by it consisting of its active officers and would never have entrusted their bonds to the persons who represented the owner

of the equity, and that this was a fraud upon all depositors including the plaintiffs in this cause.

(33) While it was disclosed in the notice of the reorganization plan that S. W. Straus & Co. had junior interests in the premises and would receive ten per cent (10%) of such interest, the bondholders were helpless, for the reason that they were required to pay three per cent (3%) in order to dissent from the Plan, which was approximately one-half of the market value of the certificates of stock, and they were warned beforehand that if they withdrew the bonds they would only receive the proceeds of a nominal bid minus all expenses, and were thereby coerced to keep their bonds with the Committee and to refrain from withdrawing same, and the bondholders were, therefore, not free to act but were coerced into this situation.

(34) That the only list of the bond owners is in the possession of the Committee and of the Trustees, and none of the bond owners have the means of communicating between themselves, and the only sources of information are received from the Committee and no concerted action can be taken and that the list of bond owners is kept exclusively in the
71 possession of the Committee and is not available to the bond owners. When plaintiffs received the Plan of Reorganization they demanded the return of the bonds without offering the compensation to the Committee, and that this offer was refused.

(35) Plaintiff further says that she had no knowledge that the bond issues aforesaid were in default way back in 1925 and continued to be in default and that the Trustees were in possession of the premises because of such default; that when they presented the coupons semi-annually up to the last default date such coupons were duly paid; that during the years 1925 to 1929 S. W. Straus & Co. had a custom to take back the bonds sold by it at a discount of one per cent (1%), and that the bonds were also sold upon the representations that S. W. Straus & Co. would always take them back at a discount of one per cent (1%) plus accrued interest, in pursuance of its custom, and if plaintiff would have known the real facts they would have returned the bonds to it and received the par value thereof less one per cent (1%), as was done in many cases; or upon the refusal thereof would have taken steps to protect their interest as well as the interest of the other bond owners, and would have brought about a foreclosure and sale of the premises prior to the collapse of

the real estate situation in 1929, and would have realized the value of the property in accordance with the market of real estate which was in existence prior to the present economic depression, and because of the concealment of facts they were prevented from doing so and they were thereby de-
72 prived of their rights and remedies and were defrauded and caused to sustain and suffer loss.

(36) That S. W. Straus & Co. and its officers, being trustees of each bond issue, and the members of the Committee which were also its active officers have violated their Trust and the confidence reposed in them and have betrayed their fiduciary duties to the beneficiaries of the Trust, and moreover, have violated their undertakings to use every precaution during the life of the securities to maintain them in the same attractive position in which they were offered to the public; and they have neglected to maintain the safeguards of the Straus Plan under which the securities were sold; that it was their duty to notify the bond owners of the defaults in 1925 and subsequent thereafter and of the fact that the Trustees were in possession and not to conceal such facts from them.

(37) It was the duty of the Trustees and of the other parties to reveal to the court the facts that the bond owners were not informed of the existing defaults since 1925. It was also their duty to reveal to the court the true facts; that Sidney H. Kahn, the pretended owner of the Sovereign and Annex, who acquired the property at a foreclosure sale was not the actual owner but was a mere dummy for S. W. Straus & Co., the secret owner, and the Trustees who were its officers and directors were serving in a dual capacity as representing the bond owners and the house of issue, which was the owner of the property, and as such their interests were in conflict, as on the one hand they had to serve the
73 interest of the bond owners and on the other hand they were the servants of the house of issue wherein they were financially interested. And because of the concealment of these material facts they perpetrated a fraud upon the court and were not entitled to these benefits, and such provisions in the Decree finding that the Trustees have performed their duties and were legally entitled to maintain the action as the representatives of the bond owners and were entitled to compensation were wholly null and void and of no force and effect against the beneficiaries of the Trust who were indispensable parties to such proceeding, especially in view

of the fact that the Trustees were seeking to prove their accounts while as Trustees in possession with the beneficiaries of the Trust, and the jurisdiction conferred on the court was therefore only colorable and not real, and the Decree therefore was procured in a proceeding in which the court was without jurisdiction and was collusive and fraudulent and is of no force and effect.

(38) That the Trustees were without legal authority subsequent to May 8, 1925 to prefer one bond owner over another and especially to prefer the bonds and interest coupons acquired by S. W. Straus & Co.; that they were without legal authority to pay on the Sovereign subsequent to May, 1925 the bonds which matured November 1st, 1925 in the amount of $45,000; bonds which matured November 1st, 1926 in the amount of $50,000; $9052.28 on bonds which matured November 1st, 1927; $27,718.95 on bonds which matured November 1st, 1928; and $27,741.03 on bonds which matured on November 1st, 1929; that they were without authority to

74 pay the bonds which matured subsequent to May, 1928, on the Annex, being $30,000. of the maturity of February 1st, 1926; $34,500. of the maturity of February 1st, 1927; $3551.80 on the maturity of February 1st, 1928; $9919.17 of the maturity of February 1st, 1929; $2050.00 of the maturity of February 1st, 1930; the total sum so legally paid amounting to $239,532.43; that the payment of the funds to S. W. Straus & Co. on account of interest coupons which it had taken up uncancelled and subordinate since May 8, 1925 were also illegal, and that the parties who participated in such payment should be required to account and be held liable, jointly and severally, for their actions.

(39) Subsequent to the time when Sidney H. Kahn became the owner of record of the property and when S. W. Straus & Co. became the equitable owner thereof it was their duty to pay the taxes and the interest, and the Trustees who were in possession of the premises were also charged with the duty to see that the payments of the taxes were made and to prevent the accumulation of penalties, and in diverting the funds towards the payment of interest coupons of S. W. Straus & Co. they thereby betrayed their trust duties; that they themselves were guilty of the defaults for which the Trustees have pretended to have declared the bond issue due, and the proceedings therefore were not commenced in good faith for the benefit of the bondholders but for the benefit of the parties who were guilty of the betrayal of the trust and confidence reposed in them.

(40) That the whole proceedings were conceived in fraud and were not for the purpose of foreclosing the interest
75 of the mortgagors or the owners or for the benefit of the bondholders, but in the interest of S. W. Straus & Co., its officers and directors, as the owner of the equity to foreclose the interest of the bond owners who would not trade their bonds for the certificates of stock to be issued by the Committee or the new corporation which was to perform under the Plan, and the parties did not come into court with clean hands and sought the approval of the court for their fraudulent acts without revealing to the court the true situation.

(41) That Mabel Strickrod was not the owner of the bonds and coupons as found in the Decree, but was a mere dummy for S. W. Straus & Co., or its officers and directors, and the representations made to the court that she was the owner of the subordinate bonds and coupons was fraudulent in order to conceal the true situation that S. W. Straus & Co. were the owners thereof.

(42) That the reorganization plan is a scheme to deprive bondholders of their rights to the bonds and to the payment thereof and to vest the officers and directors with the management and control of the property and to relegate the bond owners to the position of stockholders in a corporation wherein they would have no voice or vote as the holders of beneficial certificates and the trustees were wholly controlled by the manipulators of this reorganization scheme.

(43) That the Trustees whose duty it was to be impartial and to protect the bond owners at a time when
76 they were most needed have alleged themselves with the Committee and with the parties whose interest is antagonistic to that of the bond owners, and that Samuel J. T. Straus, one of the trustees, is a member on said Committee and because of this his interest is in conflict with that of the bond owners, due to the fact that as a member of the Committee it is to his interest to acquire the property at the lowest bid while as a trustee it should be his duty to receive the highest bid for the property.

(44) That in these prevailing economic conditions there are no buyers for real estate of the size and character of these properties, and unless the trustees will perform their duties and bid the property for the benefit of all bond owners the properties will be sacrificed at a sale to the nominee of the Committee at any price it would bid, and because of the affiliation of the trustees with the Committee they have adopted a

policy to stay away from the sales, not to solicit any bids and to permit the Committee to acquire the property at its own bid and the non-depositors will only receive the proceeds of such nominal bid and be deprived of the real value of the property, as those Trustees have done in many instances in connection with the bond issues floated by S. W. Straus & Co., by which the bond owners have received less than ten cents on the dollar of the real value of the property.

(45) That the payment of ten per cent (10%) to S. W. Straus & Co. on the Sovereign is wholly without any consideration, due to the fact that the Sovereign was foreclosed under the law which provided that a Master's Certificate 77 be issued and at the expiration of fifteen months from the date of the certificate that a sale be had and the purchaser would acquire the fee title to the premises: that more than fifteen months have expired and that the property would never bring at the sale the full value of the certificate issued by the Master, and therefore, there was no equity of redemption which was given up by S. W. Straus & Co., and the representations made to the bond owners that the ten per cent (10%) was given to it for its cooperation as the owner of the junior interest was due to the concealment of such fact from the bond owners.

(46) That the management of the properties in the name of the two trustees under one unit since 1925, which resulted only in available cash of approximately $11,000, was grossly mismanaged, and while it was held out to the bond owners that the respective trustees were in possession of the premises, and in charge thereof, plaintiff alleges that they were only nominally in possession, but the actual management thereof was conducted by the Straus organization; that towards such end and purpose the Straus organization has organized a corporation under the name of Wholesale Merchandisers, Inc., and that Sidney H. Kahn is President, Frederick W. Straus, Vice President, Edward R. Heinsimer, Secretary, and Nathan H. Oglesbee, Treasurer, and the directors are the same persons with the addition of Harry W. Solomon, all of whom were formerly officers and directors of S. W. Straus & Co.; that this corporation operated and managed by them, is engaged in the business of purchasing groceries, meats, carpets, furniture, engineering service and hotel supplies of every description, which it buys at wholesale, and re-sells such merchandise or service to all of the properties managed and controlled by the Straus organization through its trustees or committees, in-

cluding the hotel in question, at a profit; that the said
78 organization also maintains other corporate bodies or instrumentalities for the purpose of supplying services and supplies at a profit, and that Samuel J. T. Straus, Melvin L. Straus and Joseph D. Blosser maintain an organization under the name and style of "Trustees Management Service", and also "Chicago Management Service" in connection with the management of properties in trust or under committee management and such organizations were employed in connection with the management and operation of this hotel and that the real trustees, whose duty it was to personally manage and supervise the affairs of the property entrusted to their custody and care, have not attended to their duties, and it was their duty as trustees to safeguard the interest of the beneficiaries, and not permit the officers of S. W. Straus & Co., who were associates of the trustees, to operate and manage the properties at personal gain and profit in the form and manner as aforesaid, and that the organization of the corporations were merely for the purpose of enabling the members of the Straus organization to take undue advantage of the properties on which they floated the bond issues, and particularly, the bond issues described above, and by reason thereof they should account for the profits made and for the loss sustained by reason of the gross mismanagement thereof.

(47) That the trustees had no right to use the income from the premises during the time when they were in possession for any other purpose except to discharge the tax liens and prevent penalties, and the payment of these funds for other purposes except taxes were illegal and therefore, the trustees are liable for the 1928, 1929 and 1930 taxes which they failed
79 to pay while the trustees were in possession. It is provided in the trust indenture of each of the foregoing bond issues that in the event of the entry into possession by the trustee because of defaults, the trustee may manage and operate the same and

"after paying out of the revenue from said mortgaged property all expenses of management and operation of the same, including rents, insurance premiums and the cost of such repairs, replacement, alterations and useful additions as may seem to him proper and judicious, and all taxes, assessments or charges or liens upon said mortgaged property, or any part thereof * * * apply the residue, if any, first to the payment of any amounts due to the Trustee under this Indenture together with interest thereon at the rate of 7% per an-

num * * * next, to the payment of defaulted coupons, if any, * * *, next to the payment of accrued interest on bonds which shall have become due by lapse of time or declaration, next, to the payment of income tax payments hereinbefore provided for, and next, to the payment of the principal of those of said bonds, if any, then matured by lapse of time or declaration, and unpaid; in every instance such payment shall be made rapidly to the persons entitled thereto without discrimination or preference."

That it is also provided in each of said trust indentures that the mortgage will pay or cause to be paid all taxes and assessments within 30 days after the same shall become respectively due and payable and will produce to the trustee receipts thereof within 10 days thereafter, and in the event of a contest as to the payment of any taxes or assessments in good faith and by appropriate legal proceedings, it was provided:

"The mortgager shall deposit with the Trustee an amount of money sufficient to discharge such alleged charge or lien in full, including costs and interest to be used by the trustee for the purpose of discharging the same in the event that the mortgagor shall be unsuccessful in such contest * * * In lieu of depsitiing such cash the mortgagor shall, however, have the right to give to the trustee a bond in form and with a surety satisfactory to the trustee"

That under the foregoing clauses the trustee was charged with the duty of either obtaining cash or a surety bond for the payment of the taxes which he neglected to do, and which were concealed from the bond owners, and after the trustees have entered into possession it was their respective duties to comply with the foregoing provisions, and they had no right to disburse any of the funds for the payment of interest, principal, in the manner and form as was done without
80 paying the taxes that were due thereon and without preserving sufficient funds for the payment thereof, and such acts and doings were prohibited by the terms of the two trust indentures, and that said trustees have therefore, violated the express terms of the trust indentures in favor of the companies wherein they were personally interested, and they have therefore, made themselves personally liable for such violations.

(48) That on August 7, 1934, Robert M. Sweitzer, as County Treasurer, of this County, commenced suit in the Circuit Court of Cook County under the provisions of the Skarda Act to have himself appointed Receiver ex officio for the fail-

ure to pay the general taxes for the years 1929, 1930 and 1931, and on the 14th day of August, 1934, he was appointed Receiver ex officio in said proceeding because of the delinquency in the payment of taxes in the sum in excess of $50,000, and the Trustees have yielded possession to him and are no longer in possession thereof since that date; that while the County Treasurer is ostensibly in possession of said premises under the Skarda Act, in reality the persons associated with S. W. Straus & Co. and its officers and Successors in business, and who were in charge of the premises up to the date of his appointment, remained in charge thereof, and are receiving 6% of the gross income for their management of the hotel property and its business, and the County Treasurer is not in actual charge or operation thereof, and is maintaining a force of auditors and other agents and paying out large sums and expenditures, and is pretending to manage and operate the hotel business, which is not part of the realty, under the pretext that he is acting as Receiver to collect taxes, all of which is contrary to the law and not within the scope of the act, and null and void.

(49) That the appointment of the County Treasurer as Receiver was void and illegal, and he was appointed in a proceeding wherein the court was without jurisdiction of the parties and the subject matter, and such appointment is
81 a nullity; that the Circuit Court of Cook County had control of the trust estate, and the res was exclusively within its jurisdiction, and it was the duty of the trustees to contest the right of the Receiver, but he negligently failed to protect the trust estate as well as the court, and yielded possession to the Receiver, who is now managing and operating the business of the hotel as well as the real estate, and is paying out large sums of money for management, fees, operation of the business, and conducting the restaurant business at the hotel, and that all of such acts were void and illegal, and it was the duty of the trustees to protect the interest of the trust estate and or resist such illegal acts.

(50) That the provisions of the Skarda Act under which the said Receiver pretends to act, are wholly void and of no force and effect, and are contrary to the Constitution of the State of Illinois and in violation of Section 4 of Article 9 of the said Constitution; that the provisions of "an Act to add Sections 253A, 253B and 253C to act for the assessment of property and for the levy and collection of taxes" do not embrace the subject matter of the appointment of Receivers to

collect the rents, issues and profits; that the Act is void because the appointment of Receivers is a judicial function, and the Legislature is without power to encroach on the Judiciary by designating the County Collector as Receiver and directing his appointment without bond; that there is no statutory provision which makes real estate taxes a lien on personal property; that the appointment of the Receiver to manage and operate the hotel business deprives the beneficiaries of the trust estate of their property without due process of law; that the County Collector is prohibited by the Constitution from engaging in any business enterprises involving risks and expenditures, and that the predecessors of the present County Treasurer in the management of properties under this Act had incurred large liabilities, and after he died there were no funds available to pay the creditors, and it is contrary to
82 the law to permit such official to engage in the operation and management of business enterprises, and by reason of the illegal operation of the premises by the County Treasurer, a Receiver should be appointed to operate and manage the premises under the jurisdiction of this court, and the County Treasurer to be directed to deliver possession to such receiver and out of the funds collected, such taxes as are due may be paid.

Plaintiffs therefore, pray the following relief:

(a) That a Receiver be appointed during the pendency of this cause to operate and manage the premises, as is usual and customary in such proceedings.

(b) That the trustees be required to account and deliver all funds in their possession to the Receiver.

(c) That the trustees be removed and Successor-trustees be appointed.

(d) That an accounting be had of all moneys received and disbursements made, and that the parties who have diverted funds or misused the funds, or who are guilty of gross negligence in the management of the trust estate or in the diversion of the funds or in the wrongful receipt of the funds, be held personally, jointly and severally liable for their action.

(e) That the names of the bond owners be revealed in order that they may be communicated with and given notice of the proceedings and that they may assert their rights therein.

(f) That the Trustees be held liable for their gross negligence in allowing the defaults and in not paying the 1928, 1929 and 1930 taxes and in permitting penalties to accrue.

(g) That the court may find and determine that the Kenmore-Granville Building Corporation was conceived in fraud; that it acquired the title by virtue of the fraudulent proceedings heretofore commenced in the Superior Court of Cook County; that the premises erected together with the improvements thereon were constructed with the funds received from the bond purchasers, and that none of the parties who claimed to have an interest in the equity of redemption have any interest therein, and that there exists a resulting or constructive trust in favor of the bond investors, and that the title held by the record owner belongs in equity to the bond owners who have an interest therein to the extent of their respective investments, and that the trustee to be appointed be vested with the legal title, and the record owner be directed to convey the title to the trustee for the use and benefit of all bond owners, or in the alternative, that the new trustee or trustees may proceed with the foreclosure.

83 (h) That an appraisal may be made of the value of the property, and the parties guilty of fraud and gross negligence be held liable for the difference in such sum as this court may find to be due from them.

(i) That the court may restrain and enjoin all of the defendants, their agents, attorneys and solicitors, from using any of the bonds in their possession or control, and from soliciting the deposit of any bonds, and from using any of the bonds for any of their schemes, and from proceeding in any other court for the enforcement of the decree and from taking any other action at law or in equity until this court will have determined the issues made up by this Complaint.

(j) That the American National Bank and Trust Company of Chicago, and the Bondholders' Protective Committees be required to return the bonds deposited free and clear from any liens or encumbrances.

(k) That the court may find and determine that this Complaint was filed by the plaintiffs in their own behalf and in behalf of all other bond owners who are similarly situated; that the rights of all other bond owners are not in conflict with the rights of the plaintiffs; that it would be too expensive to make all of the bondholders parties due to the fact that they are too numerous and scattered in various States; that the matters upon which this Complaint is predicated are common as to all bond owners, and are centered on the same points of law and facts, and that therefore, the planitiffs herein are the representatives of the class, and that the Complaint was

properly filed in their own rights, and for the use and benefit of all other parties similarly situated who may themselves become parties by name if they so desire.

(l) That the court may grant such other relief in the premises as to equity may seem proper.

(m) That the court may find and determine that the proceedings heretofore commenced in the Superior and Circuit Courts of Cook County were fraudulent and without jurisdiction, and null and void and of no force and effect.

(n) That the County Treasurer, as Receiver, was illegally appointed in a proceeding wherein the court was without jurisdiction of the subject matter, and his appointment was a nullity.

(51) Plaintiffs ask that a Summons be issued requiring the following defendants to appear and answer this Complaint:

Kenmore-Granville Building Corporation
Sovereign Hotel Corporation
Robert M. Sweitzer, as County Treasurer
American National Bank and Trust Company of Chicago, as Depositary.
Mabel Strickrod
84 Sidney H. Kahn
Samuel J. T. Straus
Robert E. Straus
M. A. Rosenthal
Melvin L. Straus
Arthur W. Straus
Frederick W. Straus
William R. Heinsimer
Edward R. Heinsimer
Charles J. Beck
Nathan H. Oglesbee
Joseph D. Blosser

Individually and as officers and directors, and as trustees and as members of committees, and as co-partners of S. W. Straus & Company, and S. W. Straus & Co., and of the corporations and associations above mentioned, and S. W. Straus & Co., a corporation, and Wholesale Merchandisers, Inc.

to the end that they be required to answer this Complaint under oath.

NETTIE MEYER,
Plaintiff.

By SHULMAN, SHULMAN & ABRAMS,
Her Attorneys.

State of Illinois, } ss.
County of Cook. }

MEYER ABRAMS being first duly sworn on his oath, deposes and says that he is one of the attorneys for the plaintiff in this cause, and her duly authorized agent; that he has read the foregoing Complaint prepared by him, and knows its contents, and that it is true in substance and in fact.

MEYER ABRAMS.

Subscribed and sworn to before me this 30th day of January, A. D. 1935.

ROSE RITTENBERG,
Notary Public.

85 III. That subsequent to the filing of the complaint in the Superior Court of Cook County, petitioner, through her counsel, served notice on the defendants of a motion to be presented in the Superior Court of Cook County, February 13, 1935, for the appointment of a receiver, and for the issuance of a restraining order pursuant to the prayer contained in said complaint, but in order to escape trial in the matters contained in said complaint, and to deprive the state court of the jurisdiction, the alleged debtor corporation voluntarily appeared in this court on the same morning when the motion was to be heard in the Superior Court, and filed its alleged consent and obtained, without notice given to your petitioner, the order approving the good faith of the petition, and also restraining all creditors from proceeding in any other court, and it thereafter, through its attorney, appeared in the Superior Court with the injunction order issued by this court, and therein contained that a restraining order issued in this cause, restraining and enjoining this petitioner from further proceeding with this cause in the state court. At a hearing had in the Superior Court of Cook County it developed that the attorney for the Kenmore Granville Hotel Corporation did not represent said corporation prior to the filing of the petition in this court; that the corporation was never possessed of any of the property since the incorporation; that no corporate resolutions were signed prior to the filing of the consent in this court, and that the filing of the consent was for the purpose of obtaining a restraining order and to oust the state court of its jurisdiction; that neither the Kenmore Granville Hotel Corporation nor any of its offi-

cers and directors have ever invested any money in the project, and the Chancellor then stated that it was unfair to the Superior Court of Cook County to proceed with the matter in the District Court when the matter was to be heard the same day in the Superior Court in the manner and form as it was done, and he continued the hearing to March 18,
86 1935, and stated to counsel for the petitioner that he should appear in this court on behalf of the court and to inform it of the facts, and that he would hold the matter in abeyance until the disposition of the injunction matter pending in this court.

IV. That the Kenmore Granville Hotel Corporation is not a debtor, that it did not execute any of the bonds, nor did it assume any of its obligations; that the corporations which executed the bond issues involved have been dissolved for more than two (2) years prior to the filing of the petition; that all the interest of the corporations was foreclosed in the prior foreclosures set forth in the complaint, and Masters' Deeds were issued, so that there is no debtor in the sense of the Bankruptcy Act which may be reorganized under Section 77b, and this court is, therefore, without jurisdiction of the subject matter, there being no debtor to be reorganized under Section 77b of the amendment to the Bankruptcy Act; that insofar as the injunction and the proceedings initiated here tend to interfere with the due course of administration in the state court, involving the subject matter of fraud and breach of trust, this court is without jurisdiction to interfere with such proceedings which are not included in the Bankruptcy Act, nor in its amendments, and the injunction, therefore, should be dissolved and held for naught.

V. That the petition filed in this cause was not filed in good faith; that it was known to the petitioners that the corporations which executed the bond issues were dissolved, and their interest, if any, was foreclosed, and that the title to the property was in such a shape that it could not be reorganized in this court, and the proceedings for injunction were initiated in collusion with the Bondholders' Committee, and for the purpose of putting over a fraudulent reorganization, as set forth in the complaint.

87 Therefore, petitioner prays:

(a) That the proceedings initiated here be dismissed for want of jurisdiction.

(b) That it be dismissed for want of good faith.

(c) That the injunction be dissolved.

(d) That the court may grant such other relief in the premises as to equity may seem proper.

NETTIE MEYER,
Petitioner.
By: SHULMAN, SHULMAN & ABRAMS,
Her Counsel.

State of Illinois, } ss.
County of Cook. }

MEYER ABRAMS, being first duly sworn on oath, deposes and says that he is one of the attorneys for the petitioner in the above entitled cause, and her duly authorized agent herein; that he has read the above and foregoing petition by him subscribed; knows the contents thereof, and that the same is true in substance and in fact.

MEYER ABRAMS.

Subscribed and sworn to before me this 23rd day of February, 1935.

YETTA MAILICK,
(Seal) *Notary Public, Cook County, Illinois.*

88 And on, to wit, the 27th day of February, 1935, came the Intervening Petitioners by their attorneys and filed in the Clerk's office of said Court a certain Joint Intervening Petition in words and figures following, to wit: Filed Feb. 1935.

89 IN THE DISTRICT COURT OF THE UNITED STATES.

* * (Caption—58701) * *

JOINT INTERVENING PETITION OF GEORGE W. ROSSETTER, JAY C. McCORD AND SIDNEY H. KAHN, AS THE SOVEREIGN ANNEX FIRST MORTGAGE BONDHOLDERS' COMMITTEE AND THE SOVEREIGN FIRST MORTGAGE BONDHOLDERS' COMMITTEE, REPRESENTING CERTAIN HOLDERS OF FIRST MORTGAGE BONDS OF SAID ISSUES, PURSUANT TO ORDER OF COURT ENTERED FEBRUARY 13, 1935.

To the Honorable, the Judges of the District Court of the United States, for the Northern District of Illinois, Eastern Division:

Your petitioners, George W. Rossetter, Jay C. McCord and Sidney H. Kahn, as the Sovereign Annex First Mortgage

Bondholders' Committee, constituted under Deposit Agreement dated January 23, 1931, representing the holders of certain of the Sovereign Annex 6½% First Mortgage Gold Bonds dated August 1, 1922, and as The Sovereign First Mortgage Bondholders' Committee, constituted under Deposit Agreement dated April 21, 1931, representing the holders of certain of the 6% First Mortgage Gold Bonds dated November 1, 1919, represent and show unto the court:

90 1. That they constitute and are acting as members of two Committees, namely:

(a) The Sovereign Annex First Mortgage Bondholders' Committee, constituted under and by virtue of a Deposit Agreement dated January 23, 1931, between your petitioners as the original members and as the duly constituted successors of the original members of such Committee and persons depositing bonds thereunder; and

(b) The Sovereign First Mortgage Bondholders' Committee, constituted under and by virtue of a Deposit Agreement dated April 21, 1931, between your petitioners as the original members and as the duly constituted successors of the original members of such Committee and persons depositing bonds thereunder;

that as is represented in the creditors' petition filed in the above entitled cause, the property and premises owned by the debtor herein is improved with two separate buildings designated as "The Sovereign" and as the "Sovereign Annex"; that the property described as "The Sovereign" is subject to the lien of a first mortgage trust deed dated November 1, 1919, securing an issue of first mortgage bonds in the original principal sum of $1,000,000.00, of which said original principal amount and the coupons appertaining thereto, there is outstanding and unpaid as of this date unsubordinated bonds in the principal sum of $575,000.00, and subordinated bonds and coupons in the aggregate sum of $173,926.49; that said property described as "Sovereign Annex" is subject to the lien of a first mortgage trust deed dated August 1, 1922, securing an issue of first mortgage bonds in the original principal sum of $1,000,000.00.

91 of which said principal amount and the coupons appertaining thereto there is outstanding and unpaid as of this date unsubordinated bonds in the principal sum of $798,000.00 and subordinated coupons in the aggregated sum of $131,954.76.

2. That upon the happening of the respective defaults under the aforesaid Trust Deeds, your petitioners called for

the deposit of first mortgage bonds under and pursuant to the respective Deposit Agreements hereinbefore described, and your petitioners are representing the holders of such bonds secured by the respective Indentures aforesaid who have deposited or who may deposit their bonds with the Depositary of your petitioners; that the copy of the Deposit Agreement relating to the "Sovereign", attached to the creditors' petition as Exhibit "B", is a true and correct copy of the Deposit Agreement under which your petitioners are acting as The Sovereign First Mortgage Bondholders' Committee; that a copy of the Deposit Agreement under which your petitioners are acting as the Sovereign Annex First Mortgage Bondholders' Committee is attached hereto marked Exhibit "A" and your petitioners pray leave to refer to said Deposit Agreements with like effect as though the same were set forth in full herein.

3. That on February 4, 1935, J. Gold, R. Sandroff and S. Isenberg filed their creditors' petition under Section 77B of the Act of Congress relating to bankruptcy praying for the reorganization of the debtor herein and on February 13, 1935, said debtor filed its answer to said petition admitting substantially all of the allegations made in said creditors' petition and praying for an opportunity to reorganize; that on February 13, 1935 an order was entered approving
92 said creditors' petition as being properly filed, granting leave to these petitioners to intervene and file this, their petition, within ten (10) days.

4. That as is alleged in said creditors' petition, the lien of said "Sovereign" First Mortgage Trust Deed is being foreclosed in the Circuit Court of Cook County in a cause therein docketed as case No. B-219230 and the lien of said "Sovereign Annex" First Mortgage Trust Deed is being foreclosed in a cause known and docketed in the Circuit Court of Cook County as case No. B-218773; that although decrees of foreclosure have been entered in said respective causes aforesaid, no steps have been taken for the enforcement of said decrees by sale or otherwise.

5. That under date of February 3, 1933, your petitioners, as said "Sovereign" First Mortgage Bondholders' Committee and said "Sovereign Annex" First Mortgage Bondholders' Committee, formulated and adopted a joint plan of reorganization, the scope of which said plan included the financial structures of the two separate units known and designated as aforesaid, it being intended, contemplated and

designed that under said plan the two properties would be operated together.

6. That on, to-wit, July 13, 1933, your petitioners, as such Committees as aforesaid, mailed to all holders of said Sovereign and Sovereign Annex First Mortgage Bonds, to the extent that the names and addresses of such holders were known, a notice of the adoption of said plan of reorganization; that the notice referred to in Paragraph 12 of said
93 creditors' petition and attached thereto marked Exhibit "F" is a copy of the notice prepared and mailed under the supervision and direction of these Committees, and your petitioners pray leave to refer to said Exhibit "F" for a summary of the description of the indentures of mortgage hereinbefore referred to, the description of the property, the financial position of the property and the general financial condition of the operations of said property as of July 13, 1933, and the summary of the details of said plan of reorganization as though the same were incorporated herein at length.

7. That since the aforesaid communication to the bondholders, your petitioners, as such Committees, as aforesaid, did, under date of April 23, 1934, mail an additional general communication to said bondholders, a copy of which is hereto attached marked Exhibit "B" and by reference made a part hereof as though the same were incorporated herein at length.

8. That as of February 13, 1935, there was on deposit with American National Bank and Trust Company of Chicago, as Depositary under said respective Deposit Agreements aforesaid, bonds in the aggregate principal sum of $543,600.00 or 94.5% of the principal amount of all of the outstanding, unsubordinated and unpaid first mortgage bonds of said "Sovereign" issue and bonds in the aggregate principal sum of $764,00.00 or 95.7% of the principal amount of all of the outstanding, unsubordinated and unpaid first mortgage bonds of said "Sovereign Annex" issue; that all of said deposits represent bondholders who have assented and approved said plan of reorganization dated February 3, 1933; that your petitioners, pursuant to the terms of
94 said Deposit Agreements, are vested with full, legal and equitable title to the bonds deposited with them and are the owners and holders thereof.

9. That on February 26, 1935, said Plan of Reorganization was amended in certain respects and that as so amended

said agreement constitutes a plan of reorganization of said Kenmore-Granville Hotel Company, a corporation, the owner of the "Sovereign" and "Sovereign Annex" properties, hereinafter called the "plan", within the meaning of Section 77B of the Bankruptcy Act, as amended, a copy of which plan, marked Exhibit "C", is attached hereto and by reference made a part hereof as though the same were fully set forth herein.

10. That in addition to the indebtedness of said Debtor, as hereinbefore set forth in Paragraph 1 hereof, said Debtor is also indebted to Nomis Suarts Corporation in the approximate amount of $73,371.45, and for general property taxes as follows:

1929—Bal. $13,856.02; 1930—Bal. $18,121.34; 1931—$33,362.70; 1932—Bal. $24,777.43; 1933—1st inst. $10,276.86, 2nd inst. $10,075.35; 1934 (Estimated) $19,200.00, or in the aggregate the approximate sum of $129,669.70

and that therefore your petitioners, as the owners and holders of said deposited bonds are creditors of the said debtor holding not less than 25% in amount of claims that will be affected by said plan of reorganization and holding not less than 10% in amount of all claims against said debtor.

11. That in the opinion of your petitioners the aforesaid plan is fair to all interests involved, is reasonable and equitable and does not discriminate unfairly in favor of any class of stockholders or creditors, is feasible and complies with the provisions of subsection (b) of Section 77B of the Act aforesaid, and all of the other relevant provisions of said
95 Section 77B.

12. That your petitioners desire to submit the aforesaid plan as a plan of reorganization within the meaning and purview of Sections 77A and 77B of the Bankruptcy Act and acts and sections amendatory thereof and supplemental thereto; that said plan has been approved by the debtor herein as and for a plan of reorganization within the meaning and purview of the aforesaid sections.

13. That the depositors and holders of said bonds are widely scattered geographically, and in the opinion of your petitioners it will cause unnecessary expense, confusion and delay if the depositors of bonds under the plan are requested to execute further acceptance of the plan in writing, after having approved the plan of reorganization at the time the same was submitted as hereinbefore set forth, and the amendments thereto being immaterial and not adversely af-

fecting any creditor or stockholder affected by the plan; that therefore your petitioners, as a Committee as aforesaid, desire to be permitted to accept the aforesaid plan in writing on behalf of those bondholders who have already deposited their bonds with the Depositary of your petitioners and evidenced their acceptance of said plan of reorganization.

14. That for the purpose of completing the said plan of reorganization it is necessary that the creditors and stockholders of the debtor be divided into classes according to the nature of their respective claims and interests; that your petitioners respectfully recommend that the creditors and stockholders of the debtor, for the purpose of the plan of reorganization and the acceptance thereof as aforesaid,
96 be divided into the following classes according to the nature of their respective claims and interests;

Class A:

(1) Melvin L. Straus, as Trustee under that certain Trust Deed and Chattel Mortgage dated November 1, 1919 and recorded in the office of the Recorder of Deeds of Cook County, Illinois, as Document No. 6699724, for the benefit of himself and his attorneys for services rendered in the foreclosure proceedings case No. B-219230, as allowed by the foreclosure decree, together with court costs and Master's fees allowed by said decree; Samuel J. T. Straus, as Trustee under that certain Trust Deed and Chattel Mortgage dated August 1, 1922 and recorded in the office of the Recorder of Deeds of Cook County, Illinois, as Document No. 7717203, for the benefit of himself and his attorneys for services rendered in the foreclosure proceedings case No. B-218773, as allowed by the foreclosure decree, together with court costs and Master's fees allowed by said decree.

(2) Holders of unsubordinated, outstanding and unpaid first mortgage bonds and interest coupons secured by the Trust Deed and Chattel Mortgage to Melvin L. Straus, as Trustee, dated November 1, 1919 and recorded as Document No. 6699724 as aforesaid; holders of unsubordinated, outstanding and unpaid first mortgage bonds and interest coupons secured by the Trust Deed and Chattel Mortgage to Samuel J. T. Straus, as Trustee, dated August 1, 1922 and recorded as Document No. 7717203 as aforesaid.

Class B:

Holders of subordinated first mortgage bonds and interest coupons secured by the Trust Deed and Chattel Mortgage

recorded as Document No. 6699724 as aforesaid; holders of subordinated first mortgage bonds and interest coupons secured by the Trust Deed and Chattel Mortgage recorded as Document No. 7717203 as aforesaid.

Class C:

General Creditors.

Class D:

Holders of the Common Stock of the Debtor; that an order be entered herein fixing the manner and time within which claims of creditors and stockholders may be filed, including provisions for the filing of claims by Melvin L. Straus and Samuel J. T. Straus, as Trustees under the respective Trust Deeds aforesaid securing the first mortgage bonds, and including the filing of claims by the Committees representing the holders of first mortgage bonds secured by said respective Trust Deeds aforesaid, and that a date be set for a hearing on the confirmation of the plan of reorganization herein proposed and upon objections, if any, that may be filed thereto in accordance with any order entered in this proceeding.

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Wherefore, your petitioners pray for the entry of an order herein:

(1) Permitting your petitioners to file the plan of reorganization herein as and for a plan of reorganization pursuant to the provisions of Section 77B of the Act of Congress relating to Bankruptcy;

(2) Fixing the time of hearing for the consideration of said plan of reorganization and its confirmation and the manner of giving notice of such hearing;

(3) Providing that your petitioners may accept said plan of reorganization on behalf of the holders of bonds to whom said plan has already been submitted and who have approved of said plan and deposited their bonds, and on behalf of such bondholders as may hereafter deposit their bonds and approve of said plan of reorganization, and providing that the debtor may accept said plan of reorganization on behalf of the stockholders to whom said plan has already been submitted and who have approved of said plan;

(4) Fixing the time within which bondholders who have not deposited their bonds with your petitioners, or stockholders who have not approved of said plan, may file objections to said plan of reorganization;

98

(5) Dividing the creditors and stockholders of the debtor into classes for the purpose of the plan of reorganization presented in these proceedings, and the acceptance thereof as aforesaid;

(6) Fixing the manner and time within which the claims of creditors and stockholders may be filed and allowed and appointing a Depositary to accept bonds and interest coupons filed in accordance with such claims;

(7) Providing for such other and further relief as may be proper.

And your petitioners will ever pray.

GEORGE W. ROSSETTER, JAY C. McCORD AND SIDNEY H. KAHN, AS THE SOVEREIGN ANNEX FIRST MORTGAGE BONDHOLDERS' COMMITTEE AND THE SOVEREIGN FIRST MORTGAGE BONDHOLDERS' COMMITTEE,
By JAY C. McCORD.

GOTTLIEB & SCHWARTZ,
SONNENSCHEIN, BERKSON, LAUTMANN, LEVINSON & MORSE,
JUDAH, REICHMANN, TRUMBULL, COX & STERN,
Attorneys for Petitioners.

State of Illinois, } ss.
County of Cook, }

JAY C. McCORD, being first duly sworn, on oath deposes and says that he is a member of the Sovereign Annex and The Sovereign First Mortgage Bondholders' Committee, constituted under the respective Deposit Agreements in said petition described, the petitioners above named; that he has read the above and foregoing petition by him subscribed on behalf of such petitioners and knows the contents thereof and that the same is true in substance and in fact.

JAY C. McCORD.

Subscribed and sworn to before me, this 26th day of Feb., 1935.

JENNIE T. JOHNSON,
Notary Public.

(Seal)

99-115 * * Exhibit A. * *

(Omitted pursuant to stipulation filed April 16, 1935.)

116 EXHIBIT "B".

(Letterhead of The Sovereign and Sovereign Annex, Chicago, Illinois.)

April 23, 1934.

To Holders of the 6% First Mortgage Gold Bonds of Albert Hotel & Building Corporation, Dated November 1, 1919, and the 6½% First Mortgage Gold Bonds of Sovereign Hotel Corporation, Dated August 1, 1922, and/or Certificates of Deposit Issued Therefor:

On July 13, 1933, a Notice of Plan of Reorganization of the financial structure of the Sovereign and Sovereign Annex was sent to the above described bondholders. In order to keep you informed of developments since that time, the Committees are addressing this communication to you.

You will recall that the plan of reorganization contemplated that the depositing bondholders' proportionate share of the net proceeds derived from the operations of the property by the Trustees and the net proceeds of any first mortgage loan, if obtained, would be used to defray cash payments required to be made on account of the expenses of foreclosure and reorganization and taxes. As will be noted from the cash receipts and disbursements statement on the reverse side hereof substantial payments have been made on account of taxes and since first mortgage financing has not been obtained, the funds remaining in the hands of the Trustees have been insufficient to consummate the foreclosure proceedings. Accordingly, the final consummation of the plan of reorganization has been unavoidably delayed.

Pending the completion of the plan of reorganization, the Committee has obtained reports of operations of the property as prepared by Horwath and Horwath, accountants and auditors, in order to provide you with information relative to the earnings. The reports show that during February 1934, the property had an average occupancy of 67.25% as compared with an average occupancy of 65.82% during January, 1934 and 71.53% during the year 1933. On the reverse side hereof are presented statements of income and expense, computed on an accrual basis, for the year ended December 31, 1933, and for the months of January and February 1934. Since accrual statements do not show actual cash transactions during the respective periods, there is also presented

a summary of cash receipts and disbursements which shows the amount of cash on hand as of February 28, 1934. As indicated, considerable payments have been made on account of taxes and the following is the present status of unpaid taxes against the property (since accrued penalties are estimated, the following figures should be considered as approximations only):

Year	Payments on Account	Balance due including Accrued Penalties
1929	$18,868.93	$13,551.95
1930	10,103.86	18,348.02
Objection sustained	714.75	
1931—1st half	None	17,097.43
1931—2nd half	None	16,189.61
1932—1st half	None	11,945.20
Total (approximately)		$77,132.21

The 1932 taxes amounting to $23,653.88 were only recently billed and the first installment of same was payable on April 15, 1934. The 1933 taxes which have not as yet been billed are estimated at approximately $21,500.00.

Since a large amount of taxes still remains unpaid, it appears likely that from the net proceeds of operations of the property further applications toward the reduction of such taxes will be necessary. In view of continued unfavorable earnings of the property, it appears that unless first mortgage financing can be obtained funds sufficient to consummate the foreclosure proceedings will not be available for some time and the plan of reorganization consequently will be delayed.

Efforts towards improving the operations of the property and obtaining the necessary funds will be continued and bondholders will be notified when the Plan has been consummated.

Yours very truly,

M. A. ROSENTHAL,

Secretary of the Committees.

The Sovereign and Sovereign Annex

Statements of Income and Expense

(Computed on Accrual Basis)

Taken from the Trustees' reports of operations of the property as prepared by Horwath and Horwath, account and auditors

		January and February 1934		Year ended Dec. 31, 1933
Income:				
Rooms—Gross	$25,467.74		$198,938.22	
Less: Rooms Expense	9,857.80		52,793.42	
		$15,609.94		$146,144.80
Catering and Other Departments—Gross	$16,047.73		$106,451.66	
Less: Catering and Other Dept. Expense	14,791.77		95,792.91	
		1,255.96		10,658.75
Gross Operating Income		$16,865.90		$156,803.55
Unapportioned Expenses:				
Administration	$ 4,976.77		$ 30,179.72	
Advertising and Promotion	2,352.13		17,295.22	
Engine Room (Heat, Light and Power)	7,115.57		39,480.76	
Landscape and Grounds	.....		46.94	
Maintenance	2,792.10		29,386.83	
Reserve for Doubtful Accounts	800.00		5,450.00	
Insurance	748.78		4,226.35	
Total Unapportioned Expenses		18,785.35		126,065.82
Operating Profit or Loss		($1,919.45)D		$ 30,737.73
Estimated Taxes for the Period		3,500.00		21,500.00

D—*Deficit.*

SUMMARY OF CASH RECEIPTS AND DISBURSEMENTS

	January and February 1934	Year Ended Dec. 31, 1933
Cash on Hand at Beginning of Period	$10,151.77	$ 10,642.49
Cash Receipts During Period	42,151.35	332,019.43
	$52,303.12	$342,661.92
Cash Disbursements During Period	48,807.36	332,510.15*
Cash on Hand at End of Period	$ 3,495.76	$ 10,151.77

*Includes payments totaling $21,019.79 made on account of 1929 and 1930 taxes.

117 Amendment to Plan of Reorganization
of
The Sovereign and Sovereign Annex.

This Agreement made and entered into this 26 day of February, 1935, by and between

George W. Rossetter
Jay C. McCord and
Sidney H. Kahn,

constituting The Sovereign First Mortgage Bondholders' Committee under Deposit Agreement dated April 21, 1931, first party; and

George W. Rossetter
Jay C. McCord and
Sidney H. Kahn,

constituting the Sovereign Annex First Mortgage Bondholders' Committee under Deposit Agreement dated January 23, 1931, second party (which said Committees are hereinafter sometimes referred to as the "Committees"); and

Kenmore-Granville Hotel Company,

an Illinois corporation, third party (hereinafter sometimes referred to as the "Owner"); and

S. W. Assets Liquidation Corporation,

a Delaware corporation, fourth party,

Witnesseth:

The Committees heretofore under date of February 3, 1933, jointly entered into a Plan of Reorganization of The Sovereign and the Sovereign Annex, reference to which said Plan of Reorganization is hereby made for a specific description of the properties therein referred to, the issues of first mortgage bonds affected by the Plan and the terms and conditions of the reorganization of the financial structure of the respective properties. Said plan of Reorganization was on or about July 13, 1933 submitted to The Sovereign and the Sovereign Annex First Mortgage Bondholders and has been approved by the holders of approximately 94% of the outstanding first mortgage bonds of The Sovereign and the holders of approximately 95% of the outstanding first mortgage bonds of the Sovereign Annex. Thomas D. Nash, County Treasurer and Ex-Officio County Collector of Cook County, Illinois, was on or about August 14, 1934 appointed Tax

Receiver of both The Sovereign and the Sovereign An-
118 nex properties and possession of said properties was on or about said date surrendered by the respective Trustees under the Trust Indentures to said Tax Receiver; that Robert M. Sweitzer, as the County Treasurer and Ex-Officio County Collector of Cook County, is presently in possession of said properties as Tax Receiver. The interest of S. W. Straus & Co., referred to in said Plan of Reorganization and as hereinafter more specifically described, has been acquired by S. W. Assets Liquidation Corporation. Title to the Sovereign and Sovereign Annex properties is in the owner who has assumed and agreed to pay the bonded indebtedness secured by the respective First Mortgage Trust Indentures. An involuntary petition was heretofore filed on February 4, 1935 in the District Court of the United States, for the Northern District of Illinois, Eastern Division, asking for the reorganization of the Owner under Section 77B of the Bankruptcy Act, as amended, and said Owner has filed an answer to said proceedings indicating its desire for a reorganization, pursuant to the provisions of said Plan of Reorganization or such amendments or modifications thereof as may be made and accepted by the parties in interest, subject to the approval of said District Court. Said petition has been approved as properly filed under Section 77B of said Bankruptcy Act. The parties hereto desire to ratify, approve and confirm the Plan of Reorganization dated February 3, 1933, except as hereinafter specifically modified, amended and supplemented, so that said Plan of Reorganization, as hereinafter amended, modified and supplemented, will in all respects conform to the provisions of Section 77B of the Bankruptcy Act as amended, and shall constitute a Plan of Reorganization within the meaning and purview of said Section 77B of the Bankruptcy Act.

Now, Therefore, in consideration of the premises, it is agreed by and between the parties as follows:

1. That the parties hereto, who were not parties to the Plan of Reorganization dated February 3, 1933, do hereby ratify, approve and confirm said Plan dated February 3, 1933, in all respects, except as herein amended, modified and supplemented, and the execution of this agreement by said parties shall be deemed and considered to constitute them parties to said Plan dated February 3, 1933, which Plan is hereby incorporated by reference in this agreement as if fully set forth herein.

2. That said Plan of Reorganization dated February 3, 1933 is hereby amended, modified and supplemented as follows:

3. Paragraph 2 of said Plan of Reorganization is hereby amended to read as follows:

"At a time to be determined by the Committees, subject to the approval of said District Court, a referendum shall be conducted of said first mortgage bondholders of both issues to determine whether they desire to have the stock of the new corporation, to be issued for their benefit, deposited under a trust agreement, and in the event 51% or more in amount of said first mortgage bondholders vote against the crea-
119 tion of a trust, then the stock of the new corporation shall be issued directly to the parties hereinafter in this paragraph named in proportion to their respective interests, as hereinafter defined; otherwise, all of the common stock of the new corporation to be outstanding shall be issued to three (3) trustees (hereinafter referred to as the "Trustees") to be selected by the Committees, subject to the approval of the court. Trust certificates representing 90% of the common stock of the new corporation shall then be issued to the holders of unsubordinated first mortgage bonds. Each holder of an unsubordinated bond or bonds of Sovereign issue shall receive a trust certificate representing 1¼ shares of stock for each $100.00 in face amount of bonds held by him and a proportionate certificate for other amounts. Each holder of an unsubordinated bond or bonds of the Sovereign Annex issue shall receive a trust certificate representing 1 share of stock for each $100.00 in fact amount of bonds held by him and proportionate certificates for other amounts. Trust certificates representing 7½% of the common stock of the new corporation shall be issued to S. W. Assets Liquidation Corporation in payment of subordinated and unsubordinated advances made by S. W. Straus & Co. amounting in the aggregate to approximately $322,441.25 on account of bonds and/or coupons of The Sovereign and Sovereign Annex bond issues (S. W. Assets Liquidation Corporation having acquired the interest of S. W. Straus & Co. in such subordinated and unsubordinated advances). Trust certificates representing 2½% of the common stock of the new corporation shall be issued to Nomis-Suarts Corporation, which corporation owns all of the capital stock of the Owner in consideration of said Nomis-Suarts Corporation causing the Owner to make the title to the properties available for the

purpose hereof as aforesaid and the cancellation of the indebtedness of the Owner to said Nomis-Suarts Corporation in the amount of approximately $73,371.45."

4. Paragraph 3 of said Plan of Reorganization is hereby amended to read as follows:

"The Committee shall designate the agent of the Trustees, subject to the approval of the court, and the agent shall be entitled to compensation for the performance of its duties not to exceed the usual charges by banks and trust companies in Chicago for such services. The trust agreement providing for the appointment of Trustees and the issuance of trust certificates shall endure for a period of ten years, subject to termination in the manner herein described. Within 120 sixty days prior to the expiration of two years from the date of such agreement, the Trustees shall call a meeting of all trust certificates holders, or in lieu of such meeting, the Trustees shall conduct a referendum by mail of all trust certificate holders for the purpose of determining the wishes of the certificate holders as to the termination of the trust. In the event that a majority in amount of the holders of the trust certificates vote in favor of the termination of the trust, eiher in person or by proxy, at such meeting or through such referendum, then and in such case, the trust shall be dissolved as of the expiration of said two-year period and the stock of the new corporation shall be issued pro rata to the then holders of the trust certificates. If the holders of a majority in amount of trust certificates do not vote in favor of the termination of the trust, then the trust shall continue. In such case, prior to the expiration of the succeeding two-year period, a similar meeting or referendum shall be held to determine whether the trust shall be terminated as of the expiration of the second two-year period. Similar meetings or referenda shall be held prior to the expiration of each two-year period to determine whether the trust shall be terminated. In any event, the trust shall terminate at the expiration of the original ten-year period. The trust may be terminated at any time by a majority of the Trustees without any action by the holders of the trust certificates.

"The Trust Agreement shall provide that the holder of a trust certificate may be permitted to withdraw from the trust the proportionate share or shares of stock held by the Trustees under the Trust Agreement represented by his certificate, upon surrender of his said trust certificate to the Trustees, and the payment by said certificate holder of a reason-

able transfer fee and any stamp tax required by law to be paid in connection with such transfer.

"Any holder of trust certificates shall have the right, at any reasonable business hour, to inspect the corporate records and books of account of the new corporation.

"The Trustees shall be entitled to be recompensed for their expenses and shall receive reasonable compensation for their services, which shall not exceed in the aggregate 1% of the annual gross income derived from the rental of rooms in the property. The trust agreement shall be in such form as shall be satisfactory to the Committee and be approved by the court and shall provide that the Trustees report to the certificate holders annually or oftener. The fees and expenses of the Trustees and of the agent of the Trustees shall be paid by the new corporation. No salaries shall be allowed or paid to officers or directors of the new corporation as such so long as the trust agreement remains in effect.

121

The surviving Trustees shall have the right to fill any vacancy among the Trustees, to remove their agent and to appoint a successor agent. The trust agreement shall provide that any of the Trustees may be removed and a successor Trustee appointed at any time upon the written direction of the holders of a majority in amount of the trust certificates."

5. Paragraph 5 of the Plan of Reorganization is hereby amended by eliminating the first six sentences thereof and by inserting in lieu thereof the following:

"The new corporation shall acquire title to the mortgaged properties above described to the end that at the completion of the reorganization the title in the new corporation shall be free and clear of all liens and encumbrances whatsoever, except leases, if any, then existing, and real estate and other taxes, if any. The new corporation shall assume and agree to pay the reorganization expenses hereinafter referred to and these expenses shall be paid either out of funds available at the time of the completion of the reorganization, being funds, if any, accumulated out of the net income from the properties during the time that the Trustees under the respective indentures were in possession of said properties and additional funds, if any, accumulated by any bankruptcy trustee or debtor in possession or otherwise from the operation of the properties, or out of subsequent income derived by the new corporation, or out of the proceeds of any new first mortgage as hereinafter provided.

"Subject to the approval of the court, allowance shall be made to cover the following:

(a) Compensation to members of the Committees;

(b) Reimbursement to the Committees for the amount to be paid by them to Securities Service Corporation for secretarial and other services rendered and to be rendered to the Committees, plus out-of-pocket expenses;

(c) Charge of Depositary for the Committees, plus out of pocket expenses;

(d) Compensaton of counsel for the Committees;

(e) Compensation of counsel for the Corporation;

(f) Compensation of counsel for the petitioning creditors.

"In addition, the new corporation shall assume the expenses and charges in the foreclosure proceedings, including the Trustee's fees, unpaid balance of fees allowed to counsel for the Trustees, and unpaid balance of Master's fees. There shall also be allowed and paid the actual expenses to be incurred in connection with the organization of the new corporation, printing the new Trust Agreement and the new securities, stamps taxes, title guaranty expense, court costs in the bankruptcy proceeding, and other similar charges."

122 6. Paragraph 7 of said Plan of Reorganization shall be deleted and in lieu thereof there shall be substituted the following:

"The new corporation shall take title to the property subject to unpaid general taxes and assessments. The Plan of Reorganization shall not affect any persons, firms or corporations having claims against the debtor, the mortgage trustee or the bankruptcy trustee for materials and supplies furnished to the properties and which remain unpaid at the time of the consummation of the reorganization or for accrued and unpaid payroll in connection with the operation of the properties. All such claims shall be expressly assumed by the new corporation."

7. Paragraph 8 of said Plan of Reorganization shall be amended to read as follows:

"The management of the properties shall be subject to the supervision of the Trustees in the event a trust is created as hereinbefore provided. In the event that a trust is not created, the management of the properties shall be determined by the Board of Directors of the new corporation."

8. Paragraph 9 of the Plan of Reorganization shall be amended by deleting therefrom the second sentence.

9. There shall be added to the Plan of Reorganization the following:

"Unless all of the persons having any right, title, interest, lien or claim in or to the above mentioned properties consent to and approve of the Plan of Reorganization or accept the new securities hereinabove provided for, it is distinctly understood and agreed that the approval of the Plan of Reorganization by the first mortgage bondholders and other parties hereto, consenting thereto, and/or the acceptance by the first mortgage bondholders and other parties hereto of the new securities hereinabove provided for, are expressly conditional upon the entry of a valid order or decree confirming or approving the Plan of Reorganization, binding, upon direct or collateral attack, upon all persons who have any right, title, interest, lien or claim in or to the above mentioned properties, whether or not such persons consented to said Plan of Reorganization or whether or not they accepted any benefit thereunder. If for any reason the order or decree hereinabove referred to shall be reversed, set aside or held void or invalid, all of the bondholders and other parties hereto consenting to the Plan of Reorganization or taking any benefit thereunder shall be restored to their former right, title, lien or claim in and to said properties as such right, title, lien or claim existed prior to the entry of such or-
123 der or decree; provided, however, that the reversal, setting aside or invalidity of such order or decree shall not prohibit the parties to the reorganization plan dated February 3, 1933 from consummating said Plan of Reorganization through the foreclosure proceedings originally contemplated."

10. Exhibit "A" attached to said Plan of Reorganization shall be deleted.

11. The plan of Reorganization dated February 3, 1933 and this amendment shall be construed together as the Plan of Reorganization and shall constitute a Plan of Reorganization of the Owner within the meaning of Section 77B of the Bankruptcy Act as amended, and all statements and provisions contained in the preamble or any part of the original Plan which are inconsistent with the preamble and provisions hereof are deemed to be superseded. Except as hereby expressly modified and superseded, said agreement of February 3, 1933, shall remain in full force and effect.

In Witness Whereof, the parties hereto have caused this agreement to be executed the day and year first hereinabove set forth.

THE SOVEREIGN FIRST MORTGAGE BONDHOLDERS' COMMITTEE,
By JAY C. MCCORD.
SOVEREIGN ANNEX FIRST MORTGAGE BONDHOLDERS' COMMITTEE,
By JAY C. MCCORD.
S. W. ASSETS LIQUIDATION CORPORATION,
By HOMER H. COOPER,
Its Vice President.

(Seal)
Attest:
CLIFFORD C. PRATT,
Secretary.

KENMORE-GRANVILLE HOTEL COMPANY,
By EDWARD R. REINSIMER,
Its President.

(Seal)
Attest:
C. J. BECK,
Secretary.

124 And on, to wit, the 6th day of March, 1935 came the Petitioning Creditors by their attorneys and filed in the Clerk's office of said Court a certain Motion to Strike in words and figures following, to wit: Filed Mar 1935.

125 IN THE DISTRICT COURT OF THE UNITED STATES.
* * (Caption—58701) * *

MOTION OF PETITIONING CREDITORS TO STRIKE THE PETITION OF NETTIE MEYER.

And now come J. Gold, et al., the petitioning creditors herein, and move to strike the petition of Nettie Meyer, heretofore filed herein, and assign the following grounds for this motion:

1. That said petition of Nettie Meyer purports to set forth a cause of action against the underwriters and vendors of the first mortgage bonds issued against debtor's property for damages by reason of alleged fraudulent representations

made in the sale of said bonds, or otherwise, and said Meyer's petition is not relevant to the issues herein.

2. That said petition does not set up any grounds for relief against the debtor corporation, or its property, other or different than the relief to which other first mortgage bondholders are entitled.

126 3. That irrespective of the merits of said Meyer's petition, the petitioning creditors are entitled to the relief prayed for herein for a reorganization under Section 77-(b) of the Bankruptcy Act as amended.

4. That the allegations of paragraph I of said Meyer's petition are vague, general, and indefinite, and constitute conclusions of law and fact not founded on any allegations contained in said petition.

5. That the allegation of collusion appearing in the last paragraph of said Meyer's petition is vague, general, and indefinite; that said allegation is a conclusion not founded on any statement contained in said petition and is scandalous and impertinent.

6. That the original petition herein filed by petitioning creditors was filed prior to the suit of said Nettie Meyer in the Superior Court as Case No. 35-S-2153; and said Superior Court proceeding, in so far as it purports to raise issues, if any, which are raised in this proceeding, is improper by reason of the prior proceeding herein; and that said Superior Court proceeding, in so far as it relates to the issues herein, is, therefore, properly restrained and enjoined.

7. That said Nettie Meyer's petition purports to attack by a separate and collateral proceeding, decrees entered by the Circuit Court in proceedings to foreclose said Sovereign and Sovereign Annex mortgages; that such collateral attack upon said decrees is improper herein.

8. That said Meyer's petition does not raise any is-
127 sue as to the rights of petitioning creditors herein and other bondholders to participate in a reorganization plan, nor does said Meyer's petition question the fairness of any reorganization plan herein proposed; that, on the contrary thereof, said Meyer's petition affirmatively shows the necessity for the consummation of such a fair and equitable reorganization plan and that such purpose can be best accomplished in a proceeding herein.

9. That said petition of Nettie Meyer affirmatively discloses that she is guilty of laches and is not entitled to any

relief to prevent the carrying out of a fair and equitable reorganization plan.

10. The prayers for relief contained in said Meyer's petition are not warranted by the allegations of said petition.

11. That said Meyer's petition affirmatively shows that the debtor corporation was organized long before the commencement of said Meyer's suit in the Superior Court, and long before the passage of Section 77-(b) of the Bankruptcy Act as amended; also that said debtor corporation is seized of the title to the property described in the petition of the petitioning creditors herein, and that said debtor's property is subject to the outstanding bond issue mortgages described in said creditor's petition; and that the petitioning creditors are, therefore, entitled to the relief prayed for by their said petition heretofore filed and approved.

Wherefore, these respondents pray that said petition of Nettie Meyer be dismissed.

J. GOLD,
R. SANDROFF, and
S. ISENBERG,
Petitioning Creditors.
By I. H. FLAMM.
TARNOPOL, FLAMM & SIDEMAN,
Attorneys for said Petitioning Creditors.

And on, to wit, the 7th day of March, 1935 came the Debtor by its attorneys and filed in the Clerk's office of said Court a certain Motion in words and figures following, to wit: Filed Mar. 1935.

128 IN THE DISTRICT COURT OF THE UNITED STATES.

* * (Caption—58701) * *

MOTION OF KENMORE-GRANVILLE HOTEL COMPANY, THE DEBTOR HEREIN, TO DISMISS THE INTERVENING PETITION OF NETTIE MEYER HERETOFORE FILED HEREIN ON FEBRUARY 25, 1935.

And now comes Kenmore-Granville Hotel Company, the Debtor herein, a respondent to the intervening petition of Nettie Meyer, heretofore filed herein on February 25, 1935, and moves the court to dismiss the said intervening petition,

because said intervening petition does not comply with the provisions of subdivision (a) of Section 77B of the Bankruptcy Act as amended and fails to state any matter of equity entitling said intervening petitioner to the relief prayed for.

And for further grounds in support of the motion of this respondent for the dismissal of said intervening petition, the respondent shows unto the court that on the face of said intervening petition it appears:

129 A. That attached to and made a part of said petition is a copy of a bill of complaint filed by said petitioner as the plaintiff in the Superior Court of Cook County in a cause known and docketed therein as "Nettie Meyer v. Kenmore Granville Hotel Company, et al., No. 35S 2153", the allegations of which said complaint are wholly foreign and unrelated to the relief sought to be obtained in the pending proceeding, for the reason that the issues tendered in said complaint do not controvert the facts alleged in the creditors' petition filed herein and the answer of the Debtor filed hereto upon the basis of which this court assumed exclusive jurisdiction of the Debtor and its property; that said intervening petition contains, among other controverted and unproved general conclusions of the petitioner:

1. General conclusions of alleged fraud and deceit directed against the underwriters of said bond issues, their officers, agents and directors.

2. General conclusions of alleged mismanagement and breach of fiduciary duties directed against the Trustees under the indentures of trust securing the said two bond issues on properties in Chicago, Illinois, known as The Sovereign, and The Sovereign Annex.

3. General conclusions in the nature of a collateral attack upon the validity and propriety of the decrees for fore-
130 closure and sale heretofore entered in the two foreclosure proceedings now pending in the Circuit Court of Cook County, Illinois numbered B-218773 and B-219230 respectively.

4. General conclusions of fraud directed against George W. Rossetter, Jay C. McCord and Sidney H. Kahn, as members of The Sovereign First Mortgage Bondholders' Committee, and of The Sovereign Annex First Mortgage Bondholders' Committee and their predecessors in connection with the solicitation of bonds for deposit under the Deposit Agreements constituted for the deposit of the First Mort-

gage Bonds of The Sovereign and of the First Mortgage Bonds of The Sovereign Annex.

B. That it appears on the face of the petition that said petitioner has heretofore deposited her bond or bonds with the Depositary under the Deposit Agreement for the deposit of the First Mortgage Bonds of said Sovereign Annex and that said depositor under the provisions of the Deposit Agreement for such bonds, the interests of said petitioner are now vested in the Bondholders' Committee.

C. That it appears from said petition that said petitioner, as the plaintiff in the cause pending in the Superior Court of Cook County, Illinois, numbered 34C 13891 is seeking to collaterally attack the validity of the order entered by the Circuit Court of Cook County appointing the County Treasurer and Ex-Officio County Collector of Cook County, Illinois, tax receiver of the properties in question.

131 D. That the intervening petition wholly fails to state ultimate facts showing or tending to show that exclusive and paramount jurisdiction of the Debtor and its property has not been vested in this court, or that the creditors' petition was improperly filed or filed in bad faith under the provisions of Section 77B of the Bankruptcy Act as amended or that any jurisdiction or reason exists in equity warranting the relief sought by the intervening petition, namely: the proceedings herein should be dismissed.

Wherefore, this respondent prays the judgment of this court whether the Debtor herein shall further answer the said intervening petition.

KENMORE-GRANVILLE HOTEL COMPANY,
By MAX FREDERICK GOLDBERG.

132 And on, to wit, the 7th day of March, 1935 came the Bondholders' Committee by its attorneys and filed in the Clerk's office of said Court a certain Motion in words and figures following, to wit:

133 IN THE DISTRICT COURT OF THE UNITED STATES.

* * (Caption—58701) * *

MOTION OF GEORGE W. ROSSETTER, JAY C. McCORD AND SIDNEY H. KAHN, JOINTLY AS THE SOVEREIGN ANNEX FIRST MORTGAGE BONDHOLDERS' COMMITTEE AND THE SOVEREIGN FIRST MORTGAGE BONDHOLDERS' COMMITTEE, TO DISMISS THE INTERVENING PETITION OF NETTIE MEYER HERETOFORE FILED HEREIN ON FEBRUARY 25, 1935.

And now come George W. Rossetter, Jay C. McCord and Sidney H. Kahn, as the Sovereign Annex First Mortgage Bondholders' Committee, constituted under Deposit Agreement dated January 23, 1931, representing the holders of certain of the Sovereign Annex 6% First Mortgage Gold Bonds dated August 1, 1922, and as The Sovereign First Mortgage Bondholders' Committee, constituted under Deposit Agreement dated April 21, 1931, representing the holders of certain of the 6% First Mortgage Gold Bonds dated November 1, 1919, respondents to the intervening petition of Nettie Meyer, heretofore filed herein on February 25, 1935, and move the court to dismiss the said intervening petition, because said intervening petition does not comply with the provisions of subdivision "A" of Section 77B of the Bankruptcy Act as amended and fails to state any matter of equity entitling said intervening petitioner to the relief prayed for.

134 And for further grounds in support of the motion of these respondents for the dismissal of said intervening petition, these respondents show unto the court that on the face of said intervening petition it appears:

A. That attached to and made a part of said petition is a copy of a bill of complaint filed by said petitioner as the plaintiff in the Superior Court of Cook County in a cause known and docketed therein as "Nettie Meyer v. Kenmore-Granville Hotel Company, et al., No. 35S2153", the allegations of which said complaint are wholly foreign and unrelated to the relief sought to be obtained in the pending proceeding, for the reason that the issues tendered in said complaint do not controvert the facts alleged in the creditors'

petition filed herein and the answer of the Debtor filed thereto upon the basis of which this court assumed exclusive jurisdiction of the Debtor and its property; that said intervening petition contains, among other controverted and unproved general conclusions of the petitioner:

1: General conclusions of alleged fraud and deceit directed against the underwriters of said bond issues, their officers, agents and directors.

2: General conclusions of alleged mismanagement and breach of fiduciary duties directed against the Trustees under the indentures of trust securing the said two bond issues.

3: General conclusions in the nature of a collateral attack upon the validity and propriety of the decrees for foreclosure and sale heretofore entered in the two foreclosure
135 proceedings now pending in the Circuit Court of Cook County, Illinois numbered B-218773 and B-219230 respectively.

4: General conclusions of fraud directed against these respondents and their predecessors in connection with the solicitation of bonds for deposit under the Deposit Agreements hereinbefore described.

B. That it appears on the face of the petition that said petitioner has heretofore deposited her bond or bonds with the Depositary under said Deposit Agreement and that as a depositor under the provisions of said Deposit Agreement the interests of said petitioner are now vested in these respondents.

C. That it appears from said petition that said petitioner, as the plaintiff in the cause pending in the Superior Court of Cook County, Illinois, numbered 34-C-13891 is seeking to collaterally attack the validity of the order entered by the Circuit Court of Cook County appointing the County Treasurer and Ex-Officio County Collector of Cook County, Illinois, tax receiver of the properties in question.

D. That the intervening petition wholly fails to state ultimate facts showing or tending to show that exclusive and paramount jurisdiction of the Debtor and its property has not been vested in this court, or that the creditors' petition was improperly filed or filed in bad faith under the provisions of Section 77B of the Bankruptcy Act as amended or that any justification or reason exists in equity warrant-
136 ing the relief sought by the intervening petition, namely: the proceedings herein should be dismissed.

Wherefore, these respondents pray the judgment of this

court whether they shall further answer the said intervening petition.

GEORGE W. ROSSETTER, JAY C. MCCORD AND SIDNEY H. KAHN, JOINTLY, AS THE SOVEREIGN ANNEX FIRST MORTGAGE BONDHOLDERS' COMMITTEE AND THE SOVEREIGN FIRST MORTGAGE BONDHOLDERS' COMMITTEE,
BY SONNENSCHEIN, BERKSON, LAUTMANN, LEVINSON & MORSE,
JUDAH, REICHMANN, TRUMBULL, COX & STERN.

AUSTIN M. COX,
Of Counsel.

Mar. 20, 5. 137 And afterwards, to wit, on the 20th day of March, 1935, being one of the days of the regular March term of said Court, in the record of proceedings thereof, in said entitled cause, before the Honorable John P. Barnes, District Judge appears the following entry, to wit:

OPINION OF THE COURT.

138 IN THE DISTRICT COURT OF THE UNITED STATES.
* * (Caption—58701) * *

Chicago, Saturday, March 16, 1935, ten o'clock A. M.

Parties Met Pursuant to Adjournment.

Present:

Mr. Meyer Abrams, Mr. Francis S. Clamitz, Mr. Max Frederick Goldberg, Mr. H. E. Smoot, Mr. I. T. Zemans, Mr. Herbert M. Lautmann, Mr. Irving H. Flamm, appearing on behalf of their respective parties.

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139 The Court: (orally) Here is my view about situations, such as this:

Congress in passing 77B and 74 had the intent of devising speedy action for the reorganization of business and properties. Undoubtedly it had in mind such a situation as does

exist here in this Metropolitan District of Chicago, where hundreds of properties have been in receivership for long periods of years, where as a practical proposition it has been impossible to get them out of Court; Bondholders' Committees have been blamed, Attorneys have been blamed, Courts have been blamed because of the fact that these cases have been pending in Court for a period of three or four or five years when, as a matter of fact, these Bondholders' Committees and these lawyers and these Courts were powerless to get these cases out of Court. It is useless to tell the bondholder that they do not believe it, but it is true, the State Courts were utterly powerless to get these cases out of court. In the first place they could not get the money for the necessary expenses, assuming that they were reasonable, and if they were unreasonable they certainly could not get there. In the second place they could not get the money to pay the non-depositing bondholders; the non-depositing bondholders knew it and stood out. It was utterly impossible to get them to believe you regardless of what you said about it. Con-
140 gress undoubtedly knew it when they passed 77B and 74, and they passed 77B and 74 in order to relieve that situation, and 77B and 74 can relieve that situation if properly construed and properly applied.

Now, if any bondholder or a group of bondholders or all of the bondholders have a cause of action against S. W. Straus & Company I have no intention of destroying that cause of action. What that cause of action may be worth today I have very grave doubt, and have very grave doubt whether it is worth spending very much time on it, but that is no part of my duties to determine whether it has value or not. I have no intention to destroy it. What I have said I said because, as I understand it, Straus & Company are in bankruptcy.

If any bondholder, or a group of bondholders or all of the bondholders have a cause of action against the Trustees under these mortgages I do not want to destroy that, or, if any bondholder or a group of bondholders or all of the bondholders have a cause of action against the Bondholders' Committee I do not want to destroy this action. The matter I conceive to be of the greatest and paramount importance to the bondholders is to get this property out of court and the keeping of it out of Court.

Here is property that has been in default for about ten years, that is what you told me. Yet, it is proposed that I

should hand it back to a Court where it cannot be gotten out of the Court in less than five years, if it can then. Now,
141 that I cannot do. I am not going to do it unless I have to. I don't think I have to. I don't think the law requires me to. I am going to reorganize this Debtor's property and I am going to do it as quickly as I possibly can. Now, remember what I said: I am going to reorganize that Debtor and its property. I am going to do it as quickly as I can. I am going to turn this property out of Court where it can have a reasonable chance to make a profit. It can never make it in Court. It is utterly impossible to make a profit in this Court or in any other Court. I am going to get it out.

Now, if you have any cause of action against the Trustees or against S. W. Straus & Co. or against this Bondholders Committee I haven't any objection to your pursuing that cause of action provided that it does not interfere with the speedy completion of the bankruptcy proceedings in this Court. I am not going to allow the pursuit of these causes of action against the three entities to interfere with the speedy prosecution of this case. I am going to get this property out of Court. I am not going to have it here for five or six or ten or fifteen years while some supposed cause of action is to be prosecuted.

Now, I hope that some plan of reorganization can be devised where these supposed causes of action, if they exist, can be prosecuted and be pursued, if anybody has a
142 cause of action, but I will not permit them to delay the proceedings. I am going ahead until some reviewing Court, either a Circuit Court of Appeals of the 7th Circuit, or the United States Supreme Court tells me I shall not, because I believe it is my bounded duty to proceed. The Bondholders have a right to get this out of Court and to get it out speedily. I cannot see any reason why you should not go ahead. If you have a cause of action existing in this Bondholder, or any bondholder, one of them or all of them, that is no part of the property of the debtor. I am not going to reorganize that cause of action, but, if there is a cause of action against anybody,—I don't see it now, I haven't seen it,—in the Debtor I am going to preserve that cause of action and pass it over to the reorganized corporation. In any event we are not going to throw it away.

Now, that is the way I feel about it. Now, that is the way I am going to operate in this and in all like cases until some

reviewing Court,—and there are only two that can change my mind on that—tells me I shall not.

JOHN B. BARNES,
U. S. District Judge.

143 And afterwards, to wit, on the 20th day of March, 1935, being one of the days of the regular March term of said Court, in the record of proceedings thereof, in said entitled cause, before the Honorable John P. Barnes, District Judge, appears the following entry, to wit:

144 IN THE UNITED STATES DISTRICT COURT. Entered Mar 1935.

* * (Caption—58701) * *

ORDER.

This cause coming on to be heard upon the Petition of Nettie Meyer to dissolve the Injunction and to dismiss the proceedings for bad faith and want of jurisdiction, and upon the motion to dismiss the petition of said Nettie Meyer, and the court having heard arguments of counsel without any evidence and being fully advised in the premises;

It Is Ordered, Adjudged and Decreed that the prayer contained in the petition of Nettie Meyer to dissolve the Injunction and to dismiss the proceedings for lack of jurisdiction and for bad faith be and same is hereby denied and the motion to dismiss the Petition of Nettie Meyer is hereby reserved until after the presentation of the plan for reorganization, and that all parties be required to serve notice of further proceedings on counsel for Nettie Meyer.

It Is Further Ordered that the statement of the court in rendering the decision be made a part of the Record, which statement has been reduced to writing and filed here-
145 with.

Enter:

JOHN P. BARNES,
Judge.

Mar. 20, 1935.

146 And on, to wit, the 20th day of March, 1935, came the Petitioner by her attorneys and filed in the Clerk's office of said Court a certain Petition for Appeal in words and figures following, to wit:

147 IN THE UNITED STATES DISTRICT COURT.
* * (Caption—58701) * *

PETITION FOR APPEAL TO THE CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

Petitioner, Nettie Meyer, by Shulman, Shulman and Abrams, her attorney, conceiving herself aggrieved by order of court entered March 20, 1933, does hereby petition for an appeal from said Order to the United States Circuit Court of Appeals for the Seventh Circuit, and prays that a citation be issued against the Kenmore Granville Building Company, a corporation, J. Gold, S. Sandroff, and S. Eisenberg, petitioning creditors, and George W. Rossitter, Jay C. McCord and Sidney H. Kahn, members of Bondholders Protective Committee, commanding them and each of them to appear before said court to do and receive that which may appertain to justice to be done in the premises, and that the court may certify that no evidence was heard or taken in this cause except the oral argument of counsel.

Petitioner is hereto attaching an Assignment of Errors.

NETTIE MEYER,
Petitioner.
By SHULMAN, SHULMAN & ABRAMS,
Her Attorneys.

State of Illinois, } ss.
County of Cook. }

MEYER ABRAMS, being first duly sworn on his oath, deposes and says that he is the duly authorized agent for the petitioner; that he has read the foregoing Petition, knows the contents thereof, and that it is true in substance and in fact.

MEYER ABRAMS.

Subscribed and sworn to before me this 20th day of March, A. D., 1935.

ROSE RITTENBERG,
Notary Public.

148 And on, to wit, the 20th day of March, 1935 came the Petitioner by her attorneys and filed in the Clerk's office of said Court a certain Assignment of Errors in words and figures following, to wit:

149 ASSIGNMENT OF ERRORS. Filed Mar. 1935.

Now comes Nettie Meyer by Shulman Shulman and Abrams, her attorneys, petitioner-appellant, and assigns error of the orders made and entered in this cause and of the record and proceedings had therein, and files the following Assignment of Errors upon which she will rely in the prosecution of this appeal from the Order entered March 20, 1935, which is as follows:

(1) The court erred in denying the prayer of the petition of Nettie Meyer to dissolve the Injunction and to dismiss the proceedings for want of jurisdiction.

(2) The court erred in denying the prayer of the petition of Nettie Meyer to dissolve the Injunction and to dismiss the proceedings for bad faith.

(3) It affirmatively appears that there is no creditor and no debtor involved in these proceedings, and it was the duty of the court to so hold, and it erred in not dismissing the proceedings.

(4) It was the duty of the court to hold that the consent of the Debtor to confer jurisdiction on the court was in bad faith and is a fraud upon both the District Court and the State court.

(5) The court erred in issuing the restraining order and in refusing to dissolve it.

(6) It erred in not holding that the Amendment to the Bankruptcy Act under Section 77B was not within the scope of bankruptcy and was unconstitutional in that the Legislative Branch had usurped its powers in stripping the Judiciary of its functions.

(7) The court was without jurisdiction to deprive the State Court of the subject matter involving fraud and breach of trust.

Wherefore petitioner prays that all orders made in this cause as well as the order issuing the Injunction refusing to dissolve it and refusing to grant the prayer of the petition be reversed to the end that the proceedings be dismissed and the Injunction dissolved.

SHULMAN, SHULMAN & ABRAMS,
Attorneys for Petitioner-Appellant.

ed Mar. 20, 5. 151 And afterwards, to wit, on the 20th day of March, 1935, being one of the days of the regular March term of said Court, in the record of proceedings thereof, in said entitled cause, before the Honorable John P. Barnes, District Judge, appears the following entry, to wit:

152 IN THE UNITED STATES DISTRICT COURT.

* * (Caption—58701) * *

ORDER.

This cause coming on further to be heard upon the Petition to appeal by Nettie Meyer, petitioner, and upon the Assignment of Errors filed in open court in the presence of all counsel;

It Is Ordered that the appeal be allowed and that the said Nettie Meyer be required to file an appeal bond in the sum of $500.00 within 10 days from date hereof with sufficient surety as a cost bond. This appeal shall not stay the proceedings in the case.

It Is Further Ordered that a citation be issued against the Kenmore Granville Building Company, a corporation, J. Gold, R. Sandroff and S. Eisenberg, petitioning creditors, and George W. Rossitter, Jay C. McCord and Sidney H. Kahn, members of the Bondholders Protective Committee.

Enter:

BARNES,
Judge.

March 20, 1935.

Mar. 23, 35. 153 And on, to wit, the 23rd day of March, 1935, came the Appellant by her attorneys and filed in the Clerk's office of said Court a certain Bond on Appeal in words and figures following, to wit:

154 IN THE UNITED STATES DISTRICT COURT.

* * (Caption—58701) * *

APPEAL BOND.

Know All Men by These Presents that we, Nettie Meyer, as principal, and ..... as surety, are held and firmly bound unto the Kenmore Granville Hotel

Co., et al. in the full and just sum of $500,000 to be paid to the said Kenmore Granville Hotel Co., et al., to which payment well and truly to be made, we bind ourselves, our heirs, executors and administrators jointly and severally by these presents.

Sealed with our seals and dated this 26th day of March, A. D., 1935.

Whereas lately at the hearing of the District Court of the United States for the Northern District of Illinois, Eastern Division, in the proceedings for corporate reorganization in the above entitled cause certain orders were made and entered from which an appeal was prosecuted to the United States Circuit Court of Appeals for the Seventh Circuit, and directed to the said Kenmore Granville Hotel Co. and other parties wherein enumerated, citing them and each of them to appear in the United States Circuit Court of Appeals for the Seventh Circuit, at Chicago, Illinois, within 30 days from and after the date of said citation.

Now the condition of the above obligation is such that if the said Nettie Meyer shall prosecute said appeal to effect and answer all costs if she fails to make good her plea, then the above obligation to be void, else to remain in full force and effect.

NETTIE MEYER,
Principal.
By MEYER ABRAMS.
UNITED STATES FIDELITY & GMARANTY COMPANY,
Surety.
By EDMOND J. MORONEY.

155 And afterwards, to wit, on the 28th day of March, 1935, being one of the days of the regular March term of said Court, in the record of proceedings thereof, in said entitled cause, before the Honorable John P. Barnes, District Judge, appears the following entry, to wit:

156 IN THE UNITED STATES DISTRICT COURT.
* * (Caption—58701) * *

ORDER.

On motion of Shulman Shulman and Abrams, to approve the appeal bond of Nettie Meyer, appellant, with the United States Fidelity and Guaranty Company as surety in the

penal sum of $500.00, a per Order heretofore entered in this cause allowing the appeal;

It Is Hereby Ordered that the said appeal bond be and same is hereby ordered approved and filed, and a citation is hereby issued as prayed for in the petition for the appeal.

Enter:

BARNES,
Judge.

Mar. 28, 1935.

Apr. 2, 35. 157 And on, to wit, the 2nd day of April, 1935, came the parties by their attorneys and filed in the Clerk's office of said Court a certain Stipulation in words and figures following, to wit:

158 IN THE DISTRICT COURT OF THE UNITED STATES.

* * (Caption—58701) * *

STIPULATION.

It Is Hereby Stipulated by and between the parties through their respective attorneys that there be included in the transcript of the record in connection with the appeal taken in the above entitled cause in addition to all other documents enumerated in the Praecipe for Record, the documents hereto attached consisting of:

(1) Motion of petitioning creditors.
(2) Motion of debtor.
(3) Joint intervening petition.
(4) Agreement to Plan of Reorganization.

and that the transcript of record be certified to contain all of the foregoing documents.

SHULMAN, SHULMAN & ABRAMS,
Attorneys for Nettie Meyer, appellant.
MAX FREDERICK GOLDBERG,
Attorneys for Debtor.
TARNAPOL & FLAMM,
Attorneys for Petitioning Creditors.
SONNENSCHEIN, BERKSON, LAUTMANN, LEVINSON & MORSE,
Attorneys for Bondholders Protective Committee.

159 And on, to wit, the 28th day of March, 1935, came the Appellant by her attorneys and filed in the Clerk's office of said Court a certain Praecipe in words and figures following, to wit:

160 IN THE UNITED STATES DISTRICT COURT.

* * (Caption—58701) * *

PRAECIPE FOR RECORD.

To the Clerk of the United States District Court:

You are hereby authorized and directed to prepare for record in connection with the appeal taken in the above entitled cause to the Circuit Court of Appeals for the 7th Circuit, and to include therein the following:

(1) Petition of J. Gold, R. Sandroff and S. Isenberg, petitioning creditors on file in this court.
(2) Answer to Petition by Kenmore Granville Hotel Co.
(3) Order entered February 13, 1935.
(4) Petition of Nettie Meyer filed February 25, 1935.
(5) Order entered February 25, 1935.
(6) Written motion of George W. Rossiter, Jay C. McCord and Sidney H. Kahn to dismiss the Petition of Nettie Meyer.
(6) Order entered March 20, 1935, denying the prayer to dissolve the Injunction and to dismiss the proceedings for want of jurisdiction together with statement of the court made part of the order and filed separately.
(7) Petition for leave to appeal and Assignment of Errors filed March 20, 1935.
(8) Order allowing appeal filed March 20, 1935.
(9) Appeal bond filed March 28, 1935.
(10) Order approving appeal bond.
(11) Citation and Proof of Service.
161 (12) Praecipe for Record and Proof of Service.

You are further requested to certify the foregoing to the Circuit Court of Appeals for this Circuit.

SHULMAN, SHULMAN & ABRAMS,
Attorneys for Nettie Meyer, Appellant.

Proof of Service.

Received a copy of the foregoing Praecipe for Record this 28th day of March, A. D., 1935.

TARNOPOL, FLAMM & SIDEMAN,
Attorneys for Petitioning Creditors,
MAX FREDERICK GOLDBERG,
Attorney for Debtor,
SONNENSCHEIN, BERKSON, LAUTMANN, LEVINSON & MORSE,
JUDAH, REICHMANN, TRUMBULL, COX & STERN,
Attorneys for Jay C. McCord, et al, Members of Bondholders Protective Committee.

162 Northern District of Illinois } ss.
Eastern Division }

I, Henry W. Freeman, Clerk of the District Court of the United States for the Northern District of Illinois, do hereby certify the above and foregoing to be a true and complete transcript of the proceedings had of record made in accordance with Praecipe filed in this Court in the cause entitled In the matter of Kenmore-Granville Hotel Company, a corporation, No. 58701 as the same appear from the original records and files thereof now remaining in my custody and control.

In Testimony Whereof, I have hereunto set my hand and affixed the seal of said Court at my office, in the City of Chicago, in said District, this 8th day of April, A. D. 1935.

HENRY W. FREEMAN,
Clerk.

(Seal)

163 United States of America } ss.

IN THE DISTRICT COURT OF THE UNITED STATES.

For the Northern District of Illinois,

Eastern Division.

CITATION ON APPEAL.

To the Kenmore Granville Hotel Co., a corporation, J. Gold, R. Sandroff and S. Isenberg, petitioning creditors; George W. Rossitter, Jay C. McCord, Sidney H. Kahn, members of the Sovereign and Sovereign Annex First Mortgage Bondholders Committee, Greetings:

You Are Hereby Cited and admonished to be and appear in the United States Circuit Court of Appeals for the Seventh Circuit in the City of Chicago, State of Illinois, within 30 days from March 20, 1935, pursuant to an order allowing an appeal from the District Court of the United States, for the Northern District of Illinois, Eastern Division in a suit wherein the above parties are appellees, and Nettie Meyer is appellant, to show cause, if any there be, why the orders entered in favor of the appellees and denying the relief prayed for by the appellant should not be corrected and why speedy justice should not be done to the parties in that behalf.

JOHN P. BARNES,
Judge of the District Court for the Northern District of Illinois.

(Seal)

Proof of Service.

Service of a copy of the foregoing Citation is acknowledged this 28th day of March, A. D. 1935.

MAX FREDERICK GOLDBERG,
Attorneys for Kenmore-Granville Hotel Co.

TARNOPOL FLAMM & SIDEMAN,
Attorneys for Petitioning Creditors.

SONNENSCHEIN, BERKSON, LAUTMAN, LEVINSON & MORSE,
JUDAH REICHMANN TRUMBULL COX & STERN,
Attorneys for Jay C. McCord, et al, members of Bondholders' Protective Committee.

164 (Endorsed) In the United States District Court. * * (Caption—58701) * * Citation On Appeal. Filed Mar 28 1935 at 2:40 o'clock P. M. Henry W. Freeman Clerk.

r. 16,

Case No. 5491.

IN THE UNITED STATES CIRCUIT COURT OF APPEALS.

In the Matter of Kenmore Granville Hotel Company, a corporation, Debtor.	Appeal from the District Court of the United States for the Northern District of Illinois, Eastern Division. Honorable John P. Barnes, Judge.

STIPULATION AS TO PRINTING RECORD.

It is hereby stipulated by and between the parties through their respective attorneys that the record be printed as follows:

(1) Omit Exhibit "A" on page 15.

(2) Omit Exhibit "B" on page 16.

*(3) Omit Exhibit "E" on page 25, (21-41) and print in lieu thereof only those parts as per copy attached.

(4) Omit Exhibit "A" on page 83. (99-115)

(5) Print everything else as contained in the record.

SHULMAN, SHULMAN & ABRAMS
Attorneys for Appellant.

MAX FREDERICK GOLDBERG,
Attorneys for Debtor.

TARNOPOL, FLAWN & SIDEMAN
Attorneys for Creditors.

GOTTLEIB AND SCHWARTZ
JUDAH, REICHMANN TRUMBULL, COX & STERN
Attorneys for Committee Appellees.

Endorsed: General No. 5491 In the United States Circuit Court of Appeals In the Matter of Kenmore-Granville Hotel Company, a corporation Stipulation as to Printing Record Filed Apr. 16, 1935 Frederick G. Campbell, Clerk. Shulman, Shulman and Abrams, Attorneys & Counselors, Room 2000—134 N. La Salle Street Phone State 3300 Chicago.

* (The "copy attached" appearing at p. 10 to p. 19, printed record, is omitted here.)

At a regular term of the United States Circuit Court of Appeals for the Seventh Circuit, begun and held in the United States Court Room, in the City of Chicago, in said Seventh Circuit, on the second day of October 1934, of the October Term, in the year of our Lord one thousand nine hundred and thirty-four, and of our Independence the one hundred and fifty-ninth.

In the Matter of: Kenmore-Granville Hotel Company, a corporation
Debtor

NETTIE MEYER
Appellant

5491 *vs.*

KENMORE-GRANVILLE HOTEL COMPANY, a corporation, J. GOLD, R. SANDROFF and S. ISENBERG, Petitioning Creditors, and GEORGE W. ROSSETTER, JAY C. McCORD, SIDNEY H. KAHN, Members of The Sovereign Annex First Mortgage Bondholders' Committee.
Appellees.

Appeal from the District Court of the United States for the Northern District of Illinois Eastern Division.

And afterwards, to-wit: On the twenty-first day of May, 1935, there was filed in the office of the Clerk of this court, a Petition to Dismiss Appeal, which said Petition is in the words and figures following, to-wit:

IN THE UNITED STATES CIRCUIT COURT OF APPEALS.
* * (Caption—5491) * *

PETITION.

Now come Kenmore-Granville Hotel Company, a corporation, Debtor, J. Gold, R. Sandroff and S. Isenberg, petitioning creditors, and George W. Rossetter, Jay C. McCord and Sidney H. Kahn, as The Sovereign and Sovereign Annex First

Mortgage Bondholders' Committee, appellees herein, by their respective counsel, and move the court to dismiss the appeal of Nettie Meyer to the United States District Court of Appeals for the Seventh District allowed in the United States District Court (trans. of rec. p. 960) and in support of this motion appellees present the suggestions attached hereto.

IRVING H. FLAMM,
MAX FREDERICK GOLDBERG,
BERNARD NATH,
HERBERT M. LAUTMANN,
I. E. FERGUSON,
ARTHUR M. COX,
CLAUDE A. ROTH,
WILLIAM J. FRIEDMAN,
Counsel for Appellees.

Endorsed: Filed May 21, 1935. Frederick G. Campbell, Clerk.

And on the same day, to-wit: On the twenty-first day of May, 1935, the following further proceedings were had and entered of record, to-wit:

Tuesday, May 21, 1935.

Court met pursuant to adjournment and was opened by proclamation.

Before:

Hon. Evan A. Evans, *Circuit Judge*
Hon. William M. Sparks, *Circuit Judge*
Hon. Louis FitzHenry, *Circuit Judge.*

Now this day come the parties by their counsel, and counsel for appellees present a motion to dismiss this appeal, which said motion is taken under advisement.

It is ordered that counsel for appellant have five days to file a brief in opposition to motion to dismiss appeal.

And afterwards, to-wit: On the twenty-eighth day of May, 1935, the following further proceedings were had and entered of record, to-wit:

Tuesday, May 28, 1935.

Court met pursuant to adjournment and was opened by proclamation.

Before:

Hon. Evan A. Evans, *Circuit Judge*
Hon. William M. Sparks, *Circuit Judge*
Hon. Louis FitzHenry, *Circuit Judge*

On motion of counsel for appellees, it is now here ordered, adjudged and decreed by this court that the motion of counsel for appellees to dismiss this appeal be, and the same is hereby sustained, and that this appeal be, and the same is hereby dismissed with costs.

And afterwards, to-wit: On the eighteenth day of June, 1935, the Mandate of this Court issued to the District Court of the United States for the Northern District of Illinois, Eastern Division.

And afterwards, to-wit: On the ninth day of July, 1935, the following further proceedings were had and entered of record, to-wit:

Tuesday, July 9, 1935.

Court met pursuant to adjournment and was opened by proclamation.

Before:

Hon. Evan A. Evans, *Circuit Judge*
Hon. William M. Sparks, *Circuit Judge*

It is ordered by the court that the motion of the appellant that the Mandate of this court heretofore issued in this cause, be recalled and stayed pending application and disposition of a petition for a writ of certiorari to the Supreme Court of the United States, and for an order consolidating this cause with cause Number 5531, and to enter orders dismissing the two appeals simultaneously in the consolidated causes be, and the same is hereby overruled, and the petition of the appellant in support of said motion be, and the same is hereby denied.

And afterwards, to-wit: On the twelfth day of July, 1935, there was filed in the office of the Clerk of this court, a Praecipe for Record, which said Praecipe is in the words and figures following, to-wit:

IN THE UNITED STATES CIRCUIT COURT OF APPEALS.

* * (Caption—5491) * *

PRAECIPE FOR RECORD.

To the Clerk of the United States Circuit Court of Appeals for the Seventh Circuit:

You are hereby requested and directed to prepare the record for the Supreme Court of the United States, said record to consist of the following:

(1) Printed Record
(2) Motion to Dismiss
(3) Order of Dismissal
(4) All Orders

You are requested to certify same to the Supreme Court of the United States.

MEYER ABRAMS,
Attorney for Nettie Meyer,
Appellant.

1 At a regular term of the United States Circuit Court of Appeals for the Seventh Circuit, begun and held in the United States Court Room, in the City of Chicago, in said Seventh Circuit on the second day of October, 1934, of the October Term in the year of our Lord One Thousand Nine Hundred and Thirty-Four, and of our Independence the One Hundred and Fifty-Ninth.

In the Matter of Kenmore-Granville Hotel Company, a corporation, *Debtor;*

NETTIE MEYER, in her own behalf and on behalf of other objectors represented by Shulman, Shulman & Abrams,

5531 *vs.*

KENMORE GRANVILLE HOTEL COMPANY, a corporation, J. GOLD, R. SANDROFF and S. ISENBERG, Petitioning Creditors; and GEORGE W. ROSSETTER, JAY C. MCCORD, and SIDNEY H. KAHN, as the Sovereign Annex First Mortgage Bondholders' Committee, and the Sovereign First Mortgage Bondholders' Committee.

Appeal from the District Court of the United States for the Northern District of Illinois, Eastern Division.

The following pages numbered from 108 to and including the first one-half of 170 are true copies of the parts of the transcript of the record of proceedings of the District Court of the United States for the Northern District of Illinois, Eastern Division, filed on June 6, 1935, as called for by appellants' praecipe, filed on July 12, 1935, and appellees' praecipe, filed on July 17, 1935.

And on, to-wit, the 27th day of February, 1935, came the petitioners by their attorneys and filed in the Clerk's office of said court a certain joint intervening petition in words and figures following, to-wit:

2 IN THE DISTRICT COURT OF THE UNITED STATES
(Caption—58701)

JOINT INTERVENING PETITION OF GEORGE W. ROSSETTER, JAY C. McCORD AND SIDNEY H. KAHN, AS THE SOVEREIGN ANNEX FIRST MORTGAGE BONDHOLDERS' COMMITTEE AND THE SOVEREIGN FIRST MORTGAGE BONDHOLDERS' COMMITTEE, REPRESENTING CERTAIN HOLDERS OF FIRST MORTGAGE BONDS OF SAID ISSUES, PURSUANT TO ORDER OF COURT ENTERED FEBRUARY 13, 1935.

To the Honorable, the Judges of the District Court of the United States, for the Northern District of Illinois, Eastern Division:

Your petitioners, George W. Rossetter, Jay C. McCord and Sidney H. Kahn, as the Sovereign Annex First Mortgage Bondholders' Committee, constituted under Deposit Agreement dated January 23, 1931, representing the holders of certain of the Sovereign Annex 6½% First Mortgage Gold Bonds dated August 1, 1922, and as The Sovereign First Mortgage Bondholders' Committee, constituted under Deposit Agreement dated April 21, 1931, representing the holders of certain of the 6% First Mortgage Gold Bonds dated November 1, 1919, represent and show unto the court:

3 1. That they constitute and are acting as members of two Committees, namely:

(a) The Sovereign Annex First Mortgage Bondholders' Committee, constituted under and by virtue of a Deposit Agreement dated January 23, 1931, between your petitioners as the original members and as the duly constituted successors of the original members of such Committee and persons depositing bonds thereunder; and

(b) The Sovereign First Mortgage Bondholders' Committee, constituted under and by virtue of a Deposit Agreement dated April 21, 1931, between your petitioners as the original members and as the duly constituted successors of the original members of such Committee and persons depositing bonds thereunder;

that as is represented in the creditors' petition filed in the above entitled cause, the property and premises owned by the

debtor herein is improved with two separate buildings designated as "The Sovereign" and as the "Sovereign Annex"; that the property described as "The Sovereign" is subject to the lien of a first mortgage trust deed dated November 1, 1919, securing an issue of first mortgage bonds in the original principal sum of $1,000,000.00, of which said original principal amount and the coupons appertaining thereto, there is outstanding and unpaid as of this date unsubordinated bonds in the principal sum of $575,000.00, and subordinated bonds and coupons in the aggregate sum of $173,926.49; that said property described as "Sovereign Annex" is subject to the lien of a first mortgage trust deed dated August 1, 1922, securing an issue of first mortgage bonds in the original
4 principal sum of $1,000,000.00, of which said principal sum and the coupons appertaining thereto there is outstanding and unpaid as of this date unsubordinated bonds in the principal sum of $798,000.00 and subordinated coupons in the aggregated sum of $131,954.76.

2. That upon the happening of the respective defaults under the aforesaid Trust Deeds, your petitioners called for the deposit of first mortgage bonds under and pursuant to the respective Deposit Agreements hereinbefore described, and your petitioners are representing the holders of such bonds secured by the respective Indentures aforesaid who have deposited or who may deposit their bonds with the Depositary of your petitioners; that the copy of the Deposit Agreement relating to the "Sovereign," attached to the creditors' petition as Exhibit "B," is a true and correct copy of the Deposit Agreement under which your petitioners are acting as The Sovereign First Mortgage Bondholders' Committee; that a copy of the Deposit Agreement under which your petitioners are acting as the Sovereign Annex First Mortgage Bondholders' Committee is attached hereto marked Exhibit "A" and your petitioners pray leave to refer to said Deposit Agreement with like effect as though the same were set forth in full herein.

3. That on February 4, 1935, J. Gold, R. Sandroff and S. Isenberg filed their creditors' petition under Section 77B of the Act of Congress relating to bankruptcy praying for the reorganization of the debtor herein and on February 13, 1935, said debtor filed its answer to said petition admitting substantially all of the allegations made in said creditors'

petition and praying for an opportunity to reorganize;
5 that on February 13, 1935 an order was entered approving said creditors' petition as being properly filed, granting leave to these petitioners to intervene and file this, their petition, within ten (10) days.

4. That as is alleged in said creditors' petition, the lien of said "Sovereign" First Mortgage Trust Deed is being foreclosed in the Circuit Court of Cook County in a cause therein docketed as case No. B-219230 and the lien of said "Sovereign Annex" First Mortgage Trust Deed is being foreclosed in a cause known and docketed in the Circuit Court of Cook County as case No. B-218773; that although decrees of foreclosure have been entered in said respective causes aforesaid, no steps have been taken for the enforcement of said decrees by sale or otherwise.

5. That under date of February 3, 1933, your petitioners, as said "Sovereign" First Mortgage Bondholders' Committee and said "Sovereign Annex" First Mortgage Bondholders' Committee, formulated and adopted a joint plan of reorganization, the scope of which said plan included the financial structures of the two separate units known and designated as aforesaid, it being intended, contemplated and designed that under said plan the two properties would be operated together.

6. That on, to-wit, July 13, 1933, your petitioners, as such Committees as aforesaid, mailed to all holders of said Sovereign and Sovereign Annex First Mortgage Bonds, to the extent that the names and addresses of such holders were known, a notice of the adoption of said plan of reorganiza-
6 tion; that the notice referred to in Paragraph 12 of said creditors' petition and attached thereto marked Exhibit "F" is a copy of the notice prepared and mailed under the supervision and direction of these Committees, and your petitioners pray leave to refer to said Exhibit "F" for a summary of the description of the indentures of mortgage hereinbefore referred to, the description of the property, the financial position of the property and the general financial condition of the operations of said property as of July 13, 1933, and the summary of the details of said plan of reorganization as though the same were incorporated herein at length.

7. That since the aforesaid communication to the bondholders, your petitioners, as such Committees, as aforesaid,

did, under date of April 23, 1934, mail an additional general communication to said bondholders, a copy of which is hereto attached marked Exhibit "B" and by reference made a part hereof as though the same were incorporated herein at length.

8. That as of February 13, 1935, there was on deposit with American National Bank and Trust Company of Chicago, as Depositary under said respective Deposit Agreements aforesaid, bonds in the aggregate principal sum of $543,600.00 or 94.5% of the principal amount of all of the outstanding, unsubordinated and unpaid first mortgage bonds of said "Sovereign" issue and bonds in the aggregate principal sum of $764,000.00 or 95.7% of the principal amount of all of the outstanding, unsubordinated and unpaid first mortgage bonds of said "Sovereign Annex" issue; that all of said deposits represent bondholders who have assented and approved said plan of reorganization dated February 3, 1933; that your petitioners, pursuant to the terms of said Deposit Agree-
7 ments, are vested with full, legal and equitable title to the bonds deposited with them and are the owners and holders thereof.

9. That on February 26, 1935, said Plan of Reorganization was amended in certain respects and that as so amended said agreement constitutes a plan of reorganization of said Kenmore-Granville Hotel Company, a corporation, the owner of the "Sovereign" and "Sovereign Annex" properties, hereinafter called the "plan", within the meaning of Section 77B of the Bankruptcy Act, as amended, a copy of which plan, marked Exhibit "C", is attached hereto and by reference made a part hereof as though the same were fully set forth herein.

10. That in addition to the indebtedness of said Debtor, as hereinbefore set forth in Paragraph 1 hereof, said Debtor is also indebted to Nomis Suarts Corporation in the approximate amount of $73,371.45, and for general property taxes as follows:

1929—Bal. $13,856.02; 1930—Bal. $18,121.34;
1931—$33,362.70; 1932—Bal. $24,777.43;
1933—1st inst. $10,276.86, 2nd inst. $10,075.35;
1934 (Estimated) $19,200.00, or in the aggregate the approximate sum of $129,669.70

and that therefore your petitioners, as the owners and holders of said deposited bonds are creditors of the said debtor holding not less than 25% in amount of claims that will be affected by said plan of reorganization and holding not less than 10% in amount of all claims against said debtor.

11. That in the opinion of your petitioners the aforesaid plan is fair to all interests involved, is reasonable and equitable and does not discriminate unfairly in favor of any class of stockholders or creditors, is feasible and complies with the provisions of subsection (b) of Section 77B of the Act aforesaid, and all of the other relevant provisions of said Section 77B.

8 12. That your petitioners desire to submit the aforesaid plan as a plan of reorganization within the meaning and purview of Sections 77A and 77B of the Bankruptcy Act and acts and sections amendatory thereof and supplemental thereto; that said plan has been approved by the debtor herein as and for a plan of reorganization within the meaning and purview of the aforesaid sections.

13. That the depositors and holders of said bonds are widely scattered geographically, and in the opinion of your petitioners it will cause unnecessary expense, confusion and delay if the depositors of bonds under the plan are requested to execute further acceptance of the plan in writing, after having approved the plan of reorganization at the time the same was submitted as hereinbefore set forth, and the amendments thereto being immaterial and not adversely affecting any creditor or stockholder affected by the plan; that therefore your petitioners, as a Committee as aforesaid, desire to be permitted to accept the aforesaid plan in writing on behalf of those bondholders who have already deposited their bonds with the Depositary of your petitioners and evidenced their acceptance of said plan of reorganization.

14. That for the purpose of completing the said plan of reorganization it is necessary that the creditors and stockholders of the debtor be divided into classes according to the nature of their respective claims and interests; that your petitioners respectfully recommend that the creditors and stockholders of the debtor, for the purpose of the plan of reorganization and the acceptance thereof as aforesaid, be divided into the following classes according to the nature of their respective claims and interests:

9 *Class A:*

(1) Melvin L. Straus, as Trustee under that certain Trust Deed and Chattel Mortgage dated November 1, 1919 and recorded in the office of the Recorder of Deeds of Cook County, Illinois, as Documnt No. 6699724, for the benefit of himself and his attorneys for services rendered in the foreclosure proceedings case No. B-219230, as allowed by the foreclosure decree, togther with court costs and Master's fees allowed by said decree; Samuel J. T. Straus, as Trustee under that certain Trust Deed and Chattel Mortgage dated August 1, 1922 and recorded in the office of the Recorder of Deeds of Cook County, Illinois, as Document No. 7717203, for the benefit of himself and his attorneys for services rendered in the foreclosure proceedings case No. B-218773, as allowed by the foreclosure decree, together with court costs and Master's fees allowed by said decree.

(2) Holders of unsubordinated, outstanding and unpaid first mortgage bonds and interest coupons secured by the Trust Deed and Chattel Mortgage to Melvin L. Straus, as Trustee, dated November 1, 1919 and recorded as Document No. 6699724 as aforesaid; holders of unsubordinated, outstanding and unpaid first mortgage bonds and interest coupons secured by the Trust Deed and Chattel Mortgage to Samuel J. T. Straus, as Trustee, dated August 1, 1922 and recorded as Document No. 7717203 as aforesaid.

Class B:

Holders of subordinated first mortgage bonds and interest coupons secured by the Trust Deed and Chattel Mortgage recorded as Document No. 6699724 as aforesaid; holders of subordinated first mortgage bonds and interest coupons secured by the Trust Deed and Chattel Mortgage recorded as Document No. 7717203 as aforesaid.

Class C:

General Creditors.

Class D:

Holders of the Common Stock of the Debtor;

that an order be entered herein fixing the manner and time

within which claims of creditors and stockholders may be
10 filed, including provisions for the filing of claims by Melvin L. Straus and Samuel J. T. Straus, as Trustees under the respective Trust Deeds aforesaid securing the first mortgage bonds, and including the filing of claims by the Committees representing the holders of first mortgage bonds secured by said respective Trust Deeds aforesaid, and that a date be set for a hearing on the confirmation of the plan of reorganization herein proposed and upon objections, if any, that may be filed thereto in accordance with any order entered in this proceeding.

WHEREFORE, your petitioners pray for the entry of an order herein:

(1) Permitting your petitioners to file the plan of reorganization herein as and for a plan of reorganization pursuant to the provisions of Section 77B of the Act of Congress relating to Bankruptcy;

(2) Fixing the time of hearing for the consideration of said plan of reorganization and its confirmation and the manner of giving notice of such hearing;

(3) Providing that your petitioners may accept said plan of reorganization on behalf of the holders of bonds to whom said plan has already been submitted and who have approved of said plan and deposited their bonds, and on behalf of such bondholders as may hereafter deposit their bonds and approve of said plan of reorganization, and providing that the debtor may accept said plan of reorganization on behalf of the stockholders to whom said plan has already been submitted and who have approved of said plan;

(4) Fixing the time within which bondholders who have not deposited their bonds with your petitioners, or stockholders who have not approved of said plan, may file objec-
11 tions to said plan of reorganization;

(5) Dividing the creditors and stockholders of the debtor into classes for the purpose of the plan of reorganization presented in these proceedings, and the acceptance thereof as aforesaid;

(6) Fixing the manner and time within which the claims of creditors and stockholders may be filed and allowed and appointing a Depositary to accept bonds and interest coupons filed in accordance with such claims;

(7) Providing for such other and further relief as may be proper.

And your petitioners will ever pray.

GEORGE W. ROSSETTER, JAY C. McCORD AND SIDNEY H. KAHN, AS THE SOVEREIGN ANNEX FIRST MORTGAGE BONDHOLDERS' COMMITTEE AND THE SOVEREIGN FIRST MORTGAGE BONDHOLDERS' COMMITTEE,

By JAY C. McCORD.

GOTTLIEB & SCHWARTZ,
SONNENSCHEIN, BERKSON, LAUTMAN, LEVINSON & MORSE,
JUDAH, REICHMANN, TRUMBULL, COX & STERN,
Attorneys for Petitioners.

STATE OF ILLINOIS }
COUNTY OF COOK } ss.

JAY C. McCORD, being first duly sworn, on oath deposes and says that he is a member of the Sovereign Annex and The Sovereign First Mortgage Bondholders' Committee, constituted under the respective Deposit Agreements in said petition described, the petitioners above named; that he has read the above and foregoing petition by him subscribed on behalf of such petitioners and knows the contents thereof and that the same is true in substance and in fact.

JAY C. McCORD.

Subscribed and sworn to before me, this 26th day of Feb. ....., 1935.

JENNIE T. JOHNSON,
Notary Public.

12 PLAN OF REORGANIZATION OF THE SOVEREIGN AND THE SOVEREIGN ANNEX

Messrs. Rufus C. Dawes, Jay C. McCord, Georg W. Rossetter and Sidney H. Kahn, have heretofore been constituted and appointed The Sovereign First Mortgage Bondholders'

Committee under Deposit Agreement dated April 21, 1931, and Messrs. Rufus C. Dawes, Jay C. McCord, George W. Rossetter, Sidney H. Kahn and Robert E. Straus have heretofore been constituted and appointed The Sovereign Annex First Mortgage Bondholders' Committee under Deposit Agreement dated January 23, 1931, (which said Committees are hereinafter sometimes together referred to as the "Committees").

The Sovereign Hotel, located at the northwest corner of Kenmore and Granville Avenues, Chicago, Illinois, is subject among other things, to a Trust Deed and Chattel Mortgage dated November 1, 1919, from Albert Hotel & Building Corporation to Arthur W. Straus, as Trustee, securing an issue of Six Per Cent (6%) First Mortgage Gold Bonds in the original aggregate principal sum of One Million Dollars ($1,000,000), of which unsubordinated bonds in the aggregate principal sum of Five Hundred Seventy-five Thousand Dollars ($575,000) remain outstanding and unpaid.

The Sovereign Annex, situated on Kenmore Avenue, near Granville Avenue, Chicago, Illinois, is subject, among other things, to a Trust Deed and Chattel Mortgage dated
13. August 1, 1922, from The Sovereign Hotel Corporation to Melvin L. Straus, as Trustee, securing an issue of Six and One-Half Per Cent (6½%) First Mortgage Gold Bonds in the original aggregate principal sum of One Million Dollars ($1,000,000) of which unsubordinated bonds in the aggregate principal amount of Seven Hundred Ninety-eight Thousand Dollars ($798,000) remain outstanding and unpaid.

Default has been made in the terms of the aforesaid trust indentures in the payment of interest and principal, and it is apparent that the income from the property is insufficient to meet the payments of principal and interest due from time to time under the provisions of the said trust indentures. A reorganization and refinancing of the property is therefore necessary.

The entire amounts of the bond issues have been declared due and payable because of defaults. Proceedings have been instituted to foreclose the aforesaid trust indentures, and decrees entered therein.

Because of the defaults, the Trustees under the trust indentures have taken possession of the mortgaged properties and are now operating them and holding the income for the benefit

of the first mortgage bondholders. A substantial majority of the first mortgage bonds of both issues have been deposited, and the Committees are authorized under the said Deposit Agreements to enter into a Plan of Reorganization and are desirous of so doing.

The Sovereign Annex is an addition to the Sovereign Hotel and the two buildings were designed to be and always have been operated as a unit.

14 S. W. Straus & Co., an Illinois corporator, and Nomis-Suarts Corporation, a Delaware corporation, control the ownership of the properties conveyed by the aforesaid trust indentures, subject to certain encumbrances including taxes and said trust indentures.

It is anticipated that the properties will be sold in the future to the highest bidder.

It is unlikely that any adequate bid will be made at the sales by any outside interest and it will probably be necessary that the depositors of first mortgage bonds be protected by the purchase of the properties at the foreclosure sales on their behalf. The Committees intend to bid at the foreclosure sales and have adopted the following Plan for the reorganizaiton of the properties:

1. Title to the properties hereinbefore specified, shall be held by a corporation (hereinafter referred to as the "New Corporation"), organized under the laws of the State of Illinois, with an authorized capital consisting of common stock of such number of shares, with or without par value, as shall be specified by counsel for the Committees.

2. All of the authorized common stock of the New Corporation shall be issued to three (3) trustees (hereinafter referred to as the "Trustees") to be selected by the Committees. Trust certificates representing ninety per cent (90%) of the common stock of the New Corporation shall be issued to the depositors of first mortgage bonds. Each depositor of a bond or bonds of The Sovereign issue shall receive

15 a trust certificate representing one and one-quarter (1¼) shares of stock for each One Hundred Dollars ($100) in face amount of bonds deposited by him, and proportionate certificates for other amounts. Each depositor of a bond or bonds of The Sovereign Annex issue shall receive a trust certificate representing one (1) share of stock for each One Hundred Dollars ($100) in face amount of bonds deposited by

him, and proportionate certificates, for other amounts. Trust certificates representing seven and one-half per cent (7½%) of the common stock of the New Corporation shall be issued to the aforesaid S. W. Straus & Co. and trust certificates representing two and one-half per cent (2½%) of the common stock of the New Corporation shall be issued to the aforesaid Nomis-Suarts Corporation, in consideration of their causing title to be made available for the purposes hereof as aforesaid.

3. Straus Service Corporation, an Illinois corporation, shall be the agent and depositary of the Trustees and shall be entitled to the usual compensation for the performance of its duties. Any officer or employee of Straus Service Corporation, S. W. Straus & Co. or affiliated companies, or of American National Bank and Trust Company of Chicago, may also be a Trustee. The trust agreement providing for the appointment of Trustees and the issuance of trust certificates shall endure for a period of ten (10) years unless sooner terminated by a majority of the Trustees, or by instruments in writing executed by the holders of sixty-six and two-thirds per cent (66⅔%) in amount of outstanding trust certificates. In the event of the death, resignation, incapacity to act or removal of any of the Trustees, then the remaining Trustee or Trustees shall fill such vacancy. The Trustees shall be entitled to be recompensed for their expenses, and shall receive reasonable compensation for their services. The trust agreement shall be in such form as shall be satisfactory to the Committees. The fees and expenses of the Trustees and of the agent and depositary of the Trustees shall be paid by the New Corporation.

4. The New Corporation shall, by agreement satisfactory to the Committees, indemnify and agree to save the trustees under the aforesaid trust indentures harmless from any income tax liability which may have been incurred by the said trustees during the period of the trustees' operation of the properties, and shall also indemnify and save said trustees harmless from any and all other claims against said trustees arising out of the trustees' operation of the properties. The New Corporation shall further indemnify the Committees against any and all taxes, assessments and other governmental charges which may be levied or assessed against them in connection with the reorganization.

5. The New Corporation shall acquire title to the mortgaged property above described, not only by conveyance but also through the foreclosure proceedings, so that the title of the New Corporation may be free and clear of all liens and encumbrances whatsoever except taxes at the date of the completion of the reorganization. The trustees under the aforesaid trust indentures have accumulated certain funds out of the net income from the properties during the period of the trustees' operation. It is anticipated that prior to the completion of the reorganization, the trustees will have ac-
17 quired certain additional funds. The share of the funds in the trustees' hands as of the date of the consummation of reorganization to which depositing bondholders are entitled, shall be applied toward the payment of the expenses of foreclosure, reorganization and other expenses incident to the consummation of the reorganization. An estimate of the said expenses is attached hereto marked Exhibit "A". The New Corporation shall expressly assume and agree to pay all of the expenses of the foreclosure, reorganization and such other expenses hereinbefore provided for not paid out of funds derived from the trustees. Said unpaid expenses shall be paid by the New Corporation before any dividends are declared upon the stock of the New Corporation, but if a mortgage is obtained as hereinafter mentioned, dividends may be declared out of excess earnings not required to meet said mortgage requirements. At the request of the parties to whom said sums are payable, the New Corporation shall execute its note or notes to evidence the indebtedness for such expenses, and shall secure the payment of such notes by first mortgage trust deed. The parties hereto shall endeavor to obtain a new first mortgage for the purposes of paying the unpaid expenses of the foreclosure and reorganization, and for the purpose of paying other expenses incident to the reorganization, including taxes.

6. The trust agreement pursuant to which the trust certificates will be issued to the depositing bondholders, shall provide that the Trustees shall not vote in favor of a sale or conveyance of the property by the New Corporation, without first mailing to the certificate holders a written sum-
18 mary of the terms of the proposed sale, and if the Trustees shall receive, within twenty (20) days from the date of such mailing, the written dissent of the holders of thirty-three and one-third per cent (33⅓%) of such trust certificates from the terms of said proposed sale, the Trustees, shall

have no right to vote in favor of consummating such proposed sale.

7. This Plan of Reorganization is conditioned upon acquisition of the above described properties by the Committees or their nominee. The Committees shall have full and absolute discretion to determine what amounts shall be bid at the foreclosure sale.

8. The management of the property shall be subject to the supervision of the Trustees.

9. This shall be deemed a Plan of Reorganization within the provisions of the Deposit Agreements hereinbefore mentioned, which Deposit Agreements are hereby referred to and made a part hereof.

The Committee shall have full discretion to determine if and when a sufficient amount of the first mortgage bonds has been deposited with them to make it advisable to declare this Plan of Reorganization effective.

10. It is understood that the Committees have executed this Plan solely as Committees and not as individuals, and only pursuant to and in connection with the powers granted to the Committees by the terms of said Deposit Agreements respectively dated April 21, 1931 and January 23, 1931, subject to all of the rights of depositing bondholders set forth in said Deposit Agreements. It is further understood 19 that no individual member of said Committees shall be deemed personally bound by any covenant, undertaking or agreement herein, and no personal liability or personal responsibility is assumed by, nor at any time shall be asserted or enforced against the members of the Committees, either individually or collectively, by reason of any of the provisions hereof, or by reason of any action or non-action taken or permitted to be taken pursuant to the provisions hereof.

In order to evidence their adoption of the foregoing Plan of Reorganization, the Committees have caused said Plan to be executed pursuant to resolution of said Committees adopted at a meeting thereof duly called and held on February 3, 1933.

THE SOVEREIGN FIRST MORTGAGE BONDHOLDERS' COMMITTEE,
By SIDNEY H. KAHN.

THE SOVEREIGN ANNEX FIRST MORTGAGE BONDHOLDERS' COMMITTEE,
By SIDNEY H. KAHN.

EXHIBIT "A"

20 UNPAID EXPENSES OF FORECLOSURE AND REORGANIZATION OF THE SOVEREIGN

Foreclosure Expenses

Trustee's fees	$3,500.00
Fees of attorneys for Trustee	9,500.00
Master's fees and estimated court costs	4,375.00

Reorganization Expenses

Expenses and compensation of Committee, 1½% of the face amount of deposited bonds, plus out of pocket expenses, estimated	$7,872.00
Depositary's fee for first year, ¾ of 1% of amount of deposited bonds; for second and third years, ¼ of 1% plus out of pocket expenses, estimated	5,248.00
Counsel for Committee	3,500.00
Organization of new corporation, printing and distribution of new securities, stamp taxes, out of pocket expenses, blue sky guaranty policy, estimated	1,750.00

21 UNPAID EXPENSES OF FORECLOSURE AND REORGANIZATION OF THE SOVEREIGN ANNEX

Foreclosure Expenses

Trustee's fees	$ 4,000.00
Fees of attorneys for Trustee	10,500.00
Master's fees and estimated court costs	4,635.00

Reorganization Expenses

Expenses and compensation of Committee, 1½% of the face amount of deposited bonds, plus out of pocket expenses, estimated	$11,308.50
Depositary's fee for first year, ¾ of 1% of amount of deposited bonds; for second and third years ¼ of 1%, plus out of pocket expenses, estimated	7,539.00
Counsel for Committee	3,500.00
Organization of new corporation, printing and distribution of new securities, stamp taxes, out of pocket expenses, blue sky and guaranty policy, estimated	1,750.00

22 ADDITIONAL EXPENSES OF THE SOVEREIGN AND THE SOVEREIGN ANNEX

Taxes, estimated $69,799.47
Non-depositors ....

23 AMENDMENT TO PLAN OF REORGANIZATION OF THE SOVEREIGN AND SOVEREIGN ANNEX.

THIS AGREEMENT made and entered into this 26 day of February, 1935, by and between

GEORGE W. ROSSETTER
JAY C. McCORD and
SIDNEY H. KAHN,

constituting The Sovereign First Mortgage Bondholders' Committee under Deposit Agreement dated April 21, 1931, first party; and

GEORGE W. ROSSETTER
JAY C. McCORD and
SIDNEY H. KAHN,

constituting the Sovereign Annex First Mortgage Bondholders' Committee under Deposit Agreement dated January 23, 1931, second party (which said Committees are hereinafter sometimes referred to as the "Committees"); and

KENMORE-GRANVILLE HOTEL COMPANY,

an Illinois corporation, third party (hereinafter sometimes referred to as the "Owner"); and

S. W. ASSETS LIQUIDATION CORPORATION,

a Delaware corporation, fourth party,

WITNESSETH:

The Committees heretofore under date of February 3, 1933, jointly entered into a Plan of Reorganization of The Sovereign and the Sovereign Annex, reference to which said Plan of Reorganization is hereby made for a specific description of the properties therein referred to, the issues of first mortgage bonds affected by the Plan and the terms and conditions

of the reorganization of the financial structure of the respective properties. Said Plan of Reorganization was on or about July 13, 1933 submitted to The Sovereign and the Sovereign Annex First Mortgage Bondholders and has been approved by the holders of approximately 94% of the outstanding first mortgage bonds of The Sovereign and the holders of approximately 95% of the outstanding first mortgage bonds of the Sovereign Annex. Thomas D. Nash, County Treasurer and Ex-Officio County Collector of Cook County, Illinois, was on or about August 14, 1934 appointed Tax Receiver of both The Sovereign and the Sovereign Annex properties and possession of said properties was on or about said date surrendered by the respective Trustees under the Trust Indenture to said Tax Receiver; that Robert M. Sweitzer, as the County Treasurer and Ex-Officio County Collector of Cook County, is presently in possession of said properties as Tax Receiver. The interest of S. W. Straus & Co., referred to in said Plan of Reorganization and as hereinafter more specifically described, has been acquired by S. W. Assets Liquidation Corporation. Title to the Sovereign and Sovereign Annex properties is in the Owner who has assumed and agreed to pay the bonded indebtedness secured by the respective First Mortgage Trust Indentures. An involuntary petition was heretofore filed on February 4, 1935 in the District Court of the United States, for the Northern District of Illinois, Eastern Division, asking for the reorganization of the Owner under Section 77B of the Bankruptcy Act, as amended, and said Owner has filed an answer to said proceedings indicating its desire for a reorganization, pursuant to the provisions of said Plan of Reorganization or such amendments or modifications thereof as may be made and accepted by the parties in interest, subject to the approval of said District Court. Said petition has been approved as properly filed under Section 77B of said Bankruptcy Act. The parties hereto desire to ratify, approve and confirm the Plan of Reorganization dated February 3, 1933, except as hereinafter specifically modified, amended and supplemented, so that said Plan of Reorganization, as hereinafter amended, modified and supplemented, will in all respects conform to the provisions of Section 77B of the Bankruptcy Act as amended, and shall constitute a Plan of Reorganization within the meaning and purview of said Section 77B of the Bankruptcy Act.

NOW, THEREFORE, in consideration of the premises, it is agreed by and between the parties as follows:

1. That the parties hereto, who were not parties to the Plan of Reorganization dated February 3, 1933, do hereby ratify, approve and confirm said Plan dated February 3, 1933, in all respects, except as herein amended, modified and supplemented, and the execution of this agreement by said parties shall be deemed and considered to constitute them parties to said Plan dated February 3, 1933, which Plan is hereby incorporated by reference in this agreement as if fully set forth herein.

2. That said Plan of Reorganization dated February 3, 1933 is hereby amended, modified and supplemented as follows:

3. Paragraph 2 of said Plan of Reorganization is hereby amended to read as follows:

"At a time to be determined by the Committees, subject to the approval of said District Court, a referendum shall be conducted of said first mortgage bondholders of both issues to determine whether they desire to have the stock of the new corporation, to be issued for their benefit, deposited under a trust agreement, and in the event 51% or more in amount of said first mortgage bondholders vote against the creation of a trust, then the stock of the new corporation shall be issued directly to the parties hereinafter in this paragraph named in proportion to their respective interests, as hereinafter defined; otherwise, all of the common stock of the new corporation to be outstanding shall be issued to three (3) trustees (hereinafter referred to as the "Trustees") to be selected by the Committees, subject to the approval of the court. Trust certificates representing 90% of the common stock of the new corporation shall then be issued to the holders of unsubordinated first mortgage bonds. Each holder of an unsubordinated bond or bonds of The Sovereign issue shall receive a trust certificate representing 1¼ shares of stock for each $100.00 in face amount of bonds held by him and a proportionate certificate for other amounts. Each holder of an unsubordinated bond or bonds of the Sovereign Annex issue shall receive a trust certificate representing 1 share of stock for each

$100.00 in face amount of bonds held by him and proportionate certificates for other amounts. Trust certificates representing 7½% of the common stock of the new corporation shall be issued to S. W. Assets Liquidation Corporation in payment of subordinated and unsubordinated advances made by S. W. Straus & Co. amounting in the aggregate to approximately $322,441.25 on account of bonds and/or coupons of The Sovereign and Sovereign Annex bond issues (S. W. Assets Liquidation Corporation having acquired the interest of S. W. Straus & Co. in such subordinated and unsubordinated advances). Trust certificates representing 2½% of the common stock of the new corporation shall be issued to Nomis-Suarts Corporation, which corporation owns all of the capital stock of the Owner in consideration of said Nomis-Suarts Corporation causing the Owner to make the title to the properties available for the purpose hereof as aforesaid and the cancellation of the indebtedness of the Owner to said Nomis-Suarts Corporation in the amount of approximately $75,371.45."

4. Paragraph 3 of said Plan of Reorganization is hereby amended to read as follows:

"The Committee shall designate the agent of the Trustees, subject to the approval of the court, and the agent shall be entitled to compensation for the performance of its duties not to exceed the usual charges by banks and trust companies in Chicago for such services. The trust agreement providing for the appointment of Trustees and the issuance of trust certificates shall endure for a period of ten years, subject to termination in the manner herein described. Within sixty days prior to
26 the expiration of two years from the date of such agreement, the Trustees shall call a meeting of all trust certificates holders, or in lieu of such meeting, the Trustees shall conduct a referendum by mail of all trust certificate holders for the purpose of determining the wishes of the certificate holders as to the termination of the trust. In the event that a majority in amount of the holders of the trust certificates vote in favor of the termination of the trust, either in person or by proxy, at such meeting or through such referendum, then and in such case, the

trust shall be dissolved as of the expiration of said two-year period and the stock of the new corporation shall be issued pro rata to the then holders of the trust certificates. If the holders of a majority in amount of trust certificates do not vote in favor of the termination of the trust, then the trust shall continue. In such case, prior to the expiration of the succeeding two-year period, a similar meeting or referendum shall be held to determine whether the trust shall be terminated as of the expiration of the second two-year period. Similar meetings or referenda shall be held prior to the expiration of each two-year period to determine whether the trust shall be terminated. In any event, the trust shall terminate at the expiraton of the original ten-year period. The trust may be terminated at any time by a majority of the Trustees without any action by the holders of the trust certificates.

"The Trust Agreement shall provide that the holder of a trust certificate may be permitted to withdraw from the trust the proportionate share or shares of stock held by the Trustees under the Trust Agreement represented by his certificate, upon surrender of his said trust certificate to the Trustees, and the payment by said certificate holder of a reasonable transfer fee and any stamp tax required by law to be paid in connection with such transfer.

"Any holder of trust certificates shall have the right, at any reasonable business hour, to inspect the corporate records and books of account of the new corporation.

"The Trustees shall be entitled to be recompensed for their expenses and shall receive reasonable compensation for their services, which shall not exceed in the aggregate 1% of the annual gross income derived from the rental of rooms in the property. The trust agreement shall be in such form as shall be satisfactory to the Committee and be approved by the court and shall provide that the Trustees report to the certificate holders annually or oftener. The fees and expenses of the Trustees and of the agent of the Trustees shall be paid by the new corporation. No salaries shall be allowed or paid to officers or directors of the new corporation as such so long as
27 the trust agreement remains in effect. The surviving

Trustees shall have the right to fill any vacancy among the Trustees, to remove their agent and to appoint a successor agent. The trust agreement shall provide that any of the Trustees may be removed and a successor Trustee appointed at any time upon the written direction of the holders of a majority in amount of the trust certificates."

5. Paragraph 5 of the Plan of Reorganization is hereby amended by eliminating the first six sentences thereof and by inserting in lieu thereof the following:

"The new corporation shall acquire title to the mortgaged properties above described to the end that at the completion of the reorganization the title in the new corporation shall be free and clear of all liens and encumbrances whatsoever, except leases, if any, then existing, and real estate and other taxes, if any. The new corporation shall assume and agree to pay the reorganization expenses hereinafter referred to and these expenses shall be paid either out of funds available at the time of the completion of the reorganization, being funds, if any, accumulated out of the net income from the properties during the time that the Trustees under the respective indentures were in possession of said properties and additional funds, if any, accumulated by any bankruptcy trustee or debtor in possession or otherwise from the operation of the properties, or out of subseqent income derived by the new corporation, or out of the proceeds of any new first mortgage as hereinafter provided.

"Subject to the approval of the court, allowance shall be made to cover the following:

(a) Compensation to members of the Committees;

(b) Reimbursement to the Committees for the amount to be paid by them to Securities Service Corporation for secretarial and other services rendered and to be rendered to the Committees, plus out-of-pocket expenses;

(c) Charge of Depositary for the Committees, plus out-of-pocket expenses;

(d) Compensation of counsel for the Committees;

(e) Compensation of counsel for the Corporation;

(f) Compensation of counsel for the petitioning creditors.

"In addition, the new corporation shall assume the expenses and charges in the foreclosure proceedings, including the Trustee's fees, unpaid balance of fees allowed to counsel for the Trustees, and unpaid balance of Master's fees. There shall also be allowed and paid the actual expenses to be incurred in connection with the organization of the new corporation, printing the new Trust Agreement and the new securities, stamp taxes, title guaranty expense, court costs in the bankruptcy proceeding, and other similar charges."

28 6. Paragraph 7 of said Plan of Reorganization shall be deleted and in lieu thereof there shall be substituted the following:

"The new corporation shall take title to the property subject to unpaid general taxes and assessments. The Plan of Reorganization shall not affect any persons, firms or corporations having claims against the debtor, the mortgage trustee or the bankruptcy trustee for materials and supplies furnished to the properties and which remain unpaid at the time of the consummation of the reorganization or for accrued and unpaid payroll in connection with the operation of the properties. All such claims shall be expressly assumed by the new corporation."

7. Paragraph 8 of said Plan of Reorganization shall be amended to read as follows:

"The management of the properties shall be subject to the supervision of the Trustees in the event a trust is created as hereinbefore provided. In the event that a trust is not created, the management of the properties shall be determined by the Board of Directors of the new corporation."

8. Paragraph 9 of the Plan of Reorganization shall be amended by deleting therefrom the second sentence.

9. There shall be added to the Plan of Reorganization the following:

"Unless all of the persons having any right, title, interest, lien or claim in or to the above mentioned properties consent to and approve of the Plan of Reorganization or accept the new securities hereinabove provided for, it is distinctly understood and agreed that the approval of the Plan of Reorganization by the first mortgage bondholders and other parties hereto, consenting thereto, and/or the acceptance by the first mortgage bondholders and other parties hereto of the new securities hereinabove provided for, are expressly conditional upon the entry of a valid order or decree confirming or approving the Plan of Reorganization, binding, upon direct or collateral attack, upon all persons who have any right, title, interest, lien or claim in or to the above mentioned properties, whether or not such persons consented to said Plan of Reorganization or whether or not they accepted any benefit thereunder. If for any reason the order or decree hereinabove referred to shall be reversed, set aside or held void or invalid, all of the bondholders and other parties hereto consenting to the Plan of Reorganization or taking any benefit thereunder shall be restored to their former right, title, lien or claim in and to said properties as such right, title, lien or claim existed prior to the entry of such order or decree; pro-
29 vided, however, that the reversal, setting aside or invalidity of such order or decree shall not prohibit the parties to the reorganization plan dated February 3, 1933 from consummating said Plan of Reorganization through the foreclosure proceedings originally contemplated."

10. Exhibit "A" attached to said Plan of Reorganization shall be deleted.

11. The Plan of Reorganization dated February 3, 1933 and this amendment shall be construed together as the Plan of Reorganization and shall constitute a Plan of Reorganization of the Owner within the meaning of Section 77B of the Bankruptcy Act as amended, and all statements and provi-

sions contained in the preamble or any part of the original Plan which are inconsistent with the preamble and provisions hereof are deemed to be superseded. Except as hereby expressly modified and superseded, said agreement of February 3, 1933, shall remain in full force and effect.

IN WITNESS WHEREOF, the parties hereto have caused this agreement to be executed the day and year first hereinabove set forth.

THE SOVEREIGN FIRST MORTGAGE BONDHOLDERS' COMMITTEE,

By .....

SOVEREIGN ANNEX FIRST MORTGAGE BONDHOLDERS' COMMITTEE,

By .....

S. W. ASSETS LIQUIDATION CORPORATION,

By .....

Its .....

Attest:

.....

Secretary

KENMORE-GRANVILLE HOTEL COMPANY,

By .....

Its President

Attest:

.....

Secretary

30 And afterwards, to wit, on the 27th day of February, 1935, being one of the days of the regular February term of said Court, in the record of proceedings thereof, in said entitled cause, before the Honorable John P. Barnes, District Judge, appears the following entry, to-wit:

31 IN THE DISTRICT COURT OF THE UNITED STATES.

* * (Caption—58701) * *

ORDER.

This cause coming on to be heard upon the verified petition of George W. Rossetter, Jay C. McCord and Sidney H. Kahn, jointly, as the Sovereign Annex First Mortgage Bondholders' Committee constituted under Deposit Agreement dated January 23, 1931, on behalf of the holders of certain of the Sovereign Annex 6½% First Mortgage Bonds dated August 1, 1922, and as The Sovereign First Mortgage Bondholders' Committee constituted under Deposit Agreement dated April 21, 1931, representing the holders of certain of The Sovereign 6% First Mortgage Bonds dated November 1, 1919, and the court having been fully advised in the premises.

NOW, THEREFORE, IT IS ORDERED:

That leave be and it is hereby given said George W. Rossetter, Jay C. McCord and Sidney H. Kahn, jointly, as the Sovereign Annex First Mortgage Bondholders' Committee, constituted under Deposit Agreement dated January 23, 1931, on behalf of the holders of certain of the Sovereign Annex 6½% First Mortgage Bonds dated August 1, 1922, and as The Sovereign First Mortgage Bondholders' Committee, constituted under Deposit Agreement dated April 21, 1931, represent-
32 ing the holders of certain of The Sovereign 6% First mortgage Bonds dated November 1, 1919, to file their petition proposing a plan of reorganization *instanter*.

3. That for the purpose of the plan of reorganization proposed in this proceeding and the acceptance thereof, the creditors and stockholders of the Debtor be divided into the following classes according to the nature of their respective claims and interests:

Class A:

(1) Melvin L. Straus, as Trustee under that certain Trust Deed and Chattel Mortgage dated November 1, 1919 and recorded in the office of the Recorder of Deeds of Cook County, Illinois, as Document No. 6699724, for the benefit of himself and his attorneys for services rendered in the foreclosure proceedings case No. B-219230, as allowed by the foreclosure decree, together with court costs and Master's fees allowed by said decree; Samuel J. T. Straus, as Trustee under that certain Trust Deed and Chattel Mortgage dated August 1, 1922 and recorded in the office of the Recorder of Deeds of Cook County, Illinois, as Document No. 7717203, for the benefit of himself and his attorneys for services rendered in the foreclosure proceedings case No. B-218773, as allowed by the foreclosure decree, together with court costs and Master's fees allowed by said decree.

(2) Holders of unsubordinated, outstanding and unpaid first mortgage bonds and interest coupons secured by the Trust Deed and Chattel Mortgage to Melvin L. Straus, as Trustee, dated November 1, 1919 and recorded as Document No. 6699724 as aforesaid; holders of unsubordinated, outstanding and unpaid first mortgage bonds and interest coupons secured by the Trust Deed and Chattel Mortgage to Samuel J. T. Straus, as Trustee, dated August 1, 1922 and recorded as Document No. 7717203 as aforesaid.

Class B:

Holders of subordinated first mortgage bonds and interest coupons secured by the Trust Deed and Chattel Mortgage recorded as Document No. 6699724 as aforesaid; holders of subordinated first mortgage bonds and interest coupons secured by the Trust Deed and Chattel Mortgage recorded as Document No. 7717203 as aforesaid.

Class C:

General Creditors.

Class D:

Holders of the Common Stock of the Debtor; that the creditors classified above represent all creditors of the Debtor affected by said plan of reorganization; that in addition to

the creditors classified above there are unpaid general taxes levied and assessed against the property and premises involved herein for the years 1929, 1930, 1931, 1932 and 1933.

4. The claims of creditors and stockholders of the Debtor shall be filed or evidenced on or before March 30, 1935, and unless so filed or evidenced on or before the date last aforesaid no claim or interest may participate in the plan of reorganization proposed in this proceeding except an order of this court for cause shown, and shall be filed and evidenced in the following manner:

(a) Proofs of interest of stockholders of the Debtor shall consist of a statement in writing, signed and verified by the stockholders, setting forth the number of shares held, the class of stock and the number and date of the
34 stock certificate or certificates, and there shall be attached to any such claim the original or a photostatic copy of such stock certificate issued in the name of such claimant, or a verified statement of the Debtor admitting the interest of the stockholders therein set forth, in which case it shall not be necessary to attach the stock certificates or photostatic copies thereof;

(b) Melvin L. Straus, as Trustee under the Trust Deed and Chattel Mortgage Document No. 6699724 aforesaid, is authorized to file a verified proof of claim in this cause on behalf of holders of all of the aforesaid first mortgage bonds and the interest coupons appertaining thereto without attaching to such claim the originals of such bonds and/or interest coupons; that any claim with respect to such bonds and/or coupons, subordinated or unsubordinated, which shall be filed by the owners and holders thereof shall, when such claims are allowed and approved, reduce pro tanto any claim filed in this proceeding by said Trustee;

(c) Samuel J. T. Straus, as Trustee under the Trust Deed and Chattel Mortgage Document No. 7717203 aforesaid, is authorized to file a verified proof of claim in this cause on behalf of holders of all of the aforesaid first mortgage bonds and the interest coupons appertaining thereto, without attaching to such claim the originals of such bonds and/or interest coupons; that any claim with respect to such bonds and/or coupons, subordinated or

unsubordinated, which shall be filed by the owners and holders thereof shall, when such claims are allowed and approved, reduce pro tanto any claim filed in this proceeding by said Trustee;

(d) The claims of creditors of the Debtor in Class A and Class B shall be filed or evidenced by filing in this cause a verified proof of claim duly signed and verified by such creditors, setting forth the claim, the consideration therefor and whether any, and if so, what securities of the Debtor are held therefor, and whether any, and if so, what payments have been made thereon, and whether any, and if so, what setoffs and counterclaims to the same exist, and that the sum claimed is justly owed from the Debtor to the creditor;

(e) Bonds and interest coupons evidencing the claims of creditors in Class A and Class B, unless lost or destroyed, shall be deposited with American National Bank and Trust Company of Chicago, which is hereby designated as the Depositary by the Court, and if the bonds or coupons are lost or destroyed, a statement of such fact and the circumstances of such loss or destruction shall be filed under oath with proof of claim. Said American National Bank and Trust Company of Chicago shall file herein on or before the 9th day of April, 1935, its certificate certifying the numbers and amounts of bonds and interest coupons deposited with it and the names of the persons so depositing the same. The fees and expenses of said Depositary shall be paid as part of the costs of administration. The Bondholders' Committee in filing claims for bonds on deposit with its Depositary, may in lieu of filing with said claims the bonds so on deposit, file its certificate or certificates of its Depositary certifying the amount and number of bonds and interest coupons which have been deposited with its Depositary.

Claims and interests of creditors and stockholders may be proved and represented by agents, committees, depositaries or other authorized representatives.

5. That all proofs of claims and interests of creditors and stockholders of the Debtor and objections to said proofs of claims and interests provided to be filed herein as aforesaid shall be filed with Carl R. Chindblom, one of the Referees in

Bankruptcy of this Court to whom this cause is especially referred for the purpose of receiving said proofs of claims and interests of creditors and stockholders of the Debtor, and objections to said proofs of claims and interests.

6. That said Carl R. Chindblom shall prior to the opening of court on April 9th, 1935, report to the court the names of all persons filing proofs of claims or interests herein, the class or classes to which said claims or interests belong and the amounts thereof, together with a statement as to what, if any, objections to any of said proofs of claims or interests have been filed.

7. That all claims and interests of creditors and stockholders of the Debtor duly filed or evidenced within the time and in the manner hereinabove specified, shall in due course be allowed by this court without taking further proofs thereof, unless written objections thereto shall be filed by the Debtor or other parties in interest on or before April 9th, 1935, in which event the claims or interests to which objections shall be made, shall be proved before this court in such manner as this court may hereafter order and direct.

8. That this cause stand continued to the 9th day of April, 1935, at 10:00 o'clock A.M., Central Standard Time, before the Honorable John P. Barnes, at which time (or at any adjournment thereof) the Honorable John P. Barnes, or any other judge sitting in his place and stead, shall consider any motion for confirmation and approval of the plan of reorganization and any objections theretofore filed to said plan; that all creditors and stockholders of the Debtor may accept said plan of reorganization by causing to be filed written acceptances with the Clerk of the Court executed in person or by a duly authorized agent or attorney, at any time or times up to the time or times of the confirmation of said plan of reorganization; that the acceptance of the plan of reorganization by said Committee on behalf of the bondholders represented by them, may be evidenced by one document executed by the members of said Committees or their duly authorized agent or attorney; that creditors and stockholders of the Debtor may file written objections to said plan of reorganization on or before April 6, 1935.

9. The Debtor shall cause to be mailed a notice of said hearing containing a summary of the provisions of this order,

to all creditors affected by the plan of reorganization and to all stockholders of the Debtor, within fifteen (15) days from the date hereof, and shall mail a copy of the plan of re-
37 organization or a summary thereof to all creditors in Class A and Class B who have not heretofore assented to the plan of reorganization; that said Debtor shall cause a notice of said hearing containing a summary of the provisions of this order to be published at least once a week for two consecutive weeks in a newspaper of general circulation published at Chicago, Illinois, the first of said publications to be made within fifteen (15) days from the date hereof. Proof of the mailing and publication of said notice within the time and in the manner herein specified, may be made by filing with the Clerk of this Court an affidavit by any duly authorized agent of the Debtor or said Committee familiar with the facts, or by filing a certificate of publication by the publisher of the newspaper in which such notice is published, attaching to such affidavit or certificate, a copy or copies of the notice so mailed and published; all costs and charges incurred in connection with the preparation of the lists and the printing, mailing and publication of said notice, plan, summary and forms of acceptance, shall be paid out of available funds.

10. The Court reserves jurisdiction to make, from time to time, such other and further orders approving, extending, limiting or otherwise modifying this order as to the Court may at any time or times seem proper.

Enter:

BARNES,
Judge.

Dated 2/27/35.

38 And on the same day, to-wit: On the 27th day of April, 1935, came the Referee and filed in the Clerk's office of said Court a certain Supplemental Report in the words and figures following, to-wit:

39 IN THE DISTRICT COURT OF THE UNITED STATES.
* * (Caption—58701) * *

SUPPLEMENTAL REPORT OF CARL R. CHINDBLOM REFEREE IN BANKRUPTCY, AS SPECIAL MASTER, ON THE FILING AND CLASSIFICATION OF CLAIMS AND INTERESTS OF CREDITORS AND STOCKHOLDERS AND ON OBJECTIONS TO PROOFS OF SUCH CLAIMS OR INTERESTS.

To the Honorable John P. Barnes, Judge of the District Court of the United States, for the Northern District of Illinois, Eastern Division, in Bankruptcy Sitting:

Honorable Sir:

On April 8, 1935, I filed a report in the above matter upon the special reference contained in the order of your Honor of February 27, 1935 that proofs of claims and interests of creditors and stockholders should be filed with me on or before March 30, 1935; that I should classify such claims and interests; that objections to such proofs of claims and interests should be filed with me, and that written objections to such proofs of claims and interests should be filed by the debtor or other parties in interest on or before April 9, 1935; and that I should make report of the aforesaid matters prior to the opening of court on April 9, 1935.

On April 9, 1935, an order was entered by the Honorable Philip L. Sullivan, one of the Judges of this Court, providing, *inter alia,* that the time for filing claims herein and objections, if any, to claims or to the confirmation of the plan of reorganization be extended to April 20, 1935.

Subsequent to the filing of my aforesaid report on April 8,
40 1935, three claims were filed herein and thereafter further claims and objections to the plan of reorganization and to the allowance of certain claims, theretofore filed, were filed with me, all of which I hereby report as supplemental to my said report of April 8, 1935.

ADDITIONAL CLAIMS FILED.

Class. A (2)

(d) Claims by individual owners and holders of bonds and interest coupons, under Trust Deed and Chattel Mortgage, Document No. 6699724, as follows:

Claim No.	Claimant	Certificate of Deposit No.	Bond No.	Principal of Bond	Documents Presented
18	J. Gold, Tarnopol, Flamm & Sideman, Attys. 134 N. La Salle St., Chicago, Ill.		918 959	$ 500.00 500.00	Bonds and Certificate of Deposit
19	R. Sandroff, Tarnopol, Flamm & Sideman, Attys. 134 N. La Salle St., Chicago, Ill.		1121 1635	500.00 1000.00	Certificate of Deposit
20	S. Isenberg, Tarnopol, Flamm & Sideman, Attys. 134 N. La Salle St., Chicago, Ill.		1498 1539 1540 1541 1542	1000.00 1000.00 1000.00 1000.00 1000.00	Certificate of Deposit
21	Jacob Meyerhoff, Shulman, Shulman and Abrams, Attys.	31246	B669 B670	100.00 100.00	None
22	Julius Meyerhoff, Shulman, Shulman and Abrams, Attys.	40504	645 714 727	100.00 100.00 100.00	None
23	Mrs. Anna Jacobson By J. Meyerhoff, her Agent, Shulman, Shulman and Abrams, Attys.		632	100.00	None
24	Mrs. Rae Mann By J. Meyerhoff, her Agent, Shulman, Shulman and Abrams, Attys.	564	705 708	Not Stated Not Stated	None None
25	Joseph Meyerhoff, By J. Meyerhoff, his Agent, Shulman, Shulman and Abrams, Attys.	587	663 664	100.00 100.00	None
26	John G. Pankin, Shulman, Shulman and Abrams, Attys.			500.00	None
27	Archie Clement and Marion Clement, 925 Cornelia Ave., Chicago, Ill.	179561	1527	1000.00	None

Claims by individual owners and holders of bonds and interest coupons, under Trust Deed and Chattel Mortgage, Document No. 7717203, as follows:

Claim No.	Claimant	Certificate of Deposit No.	Bond No.	Principal of Bond	Documents Presented
18	J. Gold, Tarnopol, Flamm & Sideman, Attys. 134 N. La Salle St., Chicago, Ill.		1606 1298 1512 1513 1637 497	$1000.00 500.00 500.00 500.00 1000.00 500.00	Bonds and Certificate of Deposit
19	R. Sandroff, Tarnopol, Flamm & Sideman, Attys. 134 N. La Salle St., Chicago, Ill.		432 1326 1499	500.00 500.00 500.00	Certificate of Deposit
20	S. Isenberg, Tarnopol, Flamm & Sideman, Attys. 134 N. La Salle St., Chicago, Ill.		619 620	1000.00 1000.00	Certificate of Deposit
21	Jacob Meyerhoff, Shulman, Shulman and Abrams, Attys.	40232	390	1000.00	None
22	Julius Meyerhoff, Shulman, Shulman and Abrams, Attys.	784	353) 392)	1500.00	None
23	Mrs. Anna Jacobson, By J. Meyerhoff, her Agent, Shulman, Shulman and Abrams, Attys.		355 to) 389)	1500.00	None
24	Mrs. Rae Mann, By J. Meyerhoff, her Agent, Shulman, Shulman and Abrams, Attys.	40503	352) 391)	1500.00	None
25	Joseph Meyerhoff, By J. Meyerhoff, his Agent, Shulman, Shulman and Abrams, Attys.	801	388	1000.00	None

Objections to Claims.

On April 20, 1935, joint and several objections were filed by Anna Jacobson, Jacob Meyerhoff, John G. Pankin, Mrs. Rae Mann, Joseph Meyerhoff, and Julius Meyerhoff, by Shul-

man, Shulman and Abrams, attorneys for said objectors, verified by Meyer Abrams, one of said attorneys, to the following claims:

(a)	Class A (1)	Claim No. 17
(b)		Claim No. 16
(c)	Class A (2)	Claim No. 17
(d)		Claim No. 16
(e)		Claim No. 13
(f)	Class B	Claim No. 17
(g)		Claim No. 16
(h)	Class C	Claim No. 15

On April 22, 1935, objections were filed by William H. Melvin, by David K. Tone and Benjamin H. Black, his attorneys, without verification, also objecting to each and every of the said last mentioned claims, objected to by Anna Jacobson et al., as aforesaid.

Objections to Plan of Reorganization.

In the same documents with the aforesaid objections to claims, each of said group of objectors objected to the plan of reorganization. Said objections are identical, except that the objections of the aforesaid William H. Melvin contains additional and further objections to said plan of reorganization (not contained in the objections of the aforesaid Anna Jacobson et al.), such additional and further objections being contained in paragraphs 5, 6 and 7 of the objections filed by said William H. Melvin.

43 No further documents, than those shown in my original report of April 8, 1933, and in this supplemental report, have been filed with me in the above matter.

Documents Transmitted.

I transmit herewith all of the aforesaid claims and objections, filed with me as aforesaid.

Respectfully submitted,

CARL R. CHINDBLOM,
Referee in Bankruptcy, acting as Special Master.

Dated, Chicago, Illinois, April 27, 1935.

I HEREBY CERTIFY that I have spent in excess of three hours of time in examination of the aforesaid claims and documents and in preparation of this report in the above matter and that, in my opinion, a reasonable and customary fee for my services in the said matter is the sum of $47.50, itemized as follows:

Commission for filing 10 claims	$ 2.50
Other services as above stated	45.00
	$ 47.50

I HEREBY CERTIFY that, in my opinion, a reasonable and proportionate charge for clerical and stenographic services in the above matter, as shown by the attached expense sheet, is $8.80. I therefore respectfully request that a total compensation of $56.30 be allowed in the above matter, of which $47.50 is for services and $8.80 for expenses.

Respectfully submitted,

CARL R. CHINDBLOM,
Referee in Bankruptcy as Special Master.

Dated, Chicago, Ill., Apr. 27, 1935.

44 And on, to-wit, the 20th day of April, 1935, came Anna Jacobson, et al. by their attorneys and filed in the Referee's office of said court certain objections in the words and figures following, to-wit:

45 IN THE DISTRICT COURT OF THE UNITED STATES.
* * (Caption—58701) * *

OBJECTIONS OF ANNA JACOBSON, JACOB MEYERHOFF, JOHN G. PANKIN, MRS. RAE MANN, JOSEPH MEYERHOFF, JULIUS MEYERHOFF.

The joint and several objections of the foregoing objectors to the Plan of Reorganization as proposed by the Bondholders Protective Committee of each of the two bond issues described in the Plan by Shulman, Shulman and Abrams, their attorneys, which objections are as follows:

(1) It appears from the records in the case that a jurisdictional question was raised by one Nettie Meyer and that an appeal has been taken and prosecuted which is now pending

in the Circuit Court of Appeals for the Seventh Circuit, and it would prejudice the whole Trust Estate and the title to be derived from any reorganization in the event the said Nettie Meyer should succeed in her appeal and for the foregoing reasons all proceedings should stop pending the disposition of the appeal.

(2) That the Plan of the Committee is inequitable and is unfair for the reason that the interest of the bondholders will be exchanged for stock in a corporation holding control by the manipulators of the Plan, and the persons who have caused to sell the bonds to the public and have concealed material facts from them to their detriment will receive Ten Percent of the stock on parity with the other bond owners, which is greatly unfair.

46 (3) These objectors who are the owners of bonds as shown by their respective claims have deposited their bonds with the Depositary of the Committee because of the confidence they had in S. W. Straus & Co. and in its officers and its directors, but it is now revealed from the proceedings commenced by Nettie Meyer that the confidence was betrayed and they, therefore, repudiate the acts of the Committee, its agent and the persons who received their bonds by misrepresentation should not be entrusted with the promulgation of plans for future reorganization and they should not be allowed to be the representatives of these objectors as well as the representatives of the innocent bond purchasers who were induced to deposit their bonds under similar circumstances by concealment of the facts.

(4) That because of the matters and things alleged in the verified complaint of Nettie Meyer which is now a matter of record in this proceeding, due notice should be given to all bond owners of the matters contained in said complaint so that the bond owners themselves may appear in court and protect their rights.

(5) That the following claims should be disallowed:

(a)	Class A (1)	Claim No. 17
(b)		Claim No. 16
(c)	Class A (2)	Claim No. 17
(d)		Claim No. 16
(e)		Claim No. 13
(f)	Class B	Claim No. 17
(g)		Claim No. 16

All of the foregoing claims having been filed either by the Trustees or by the alleged Protective Committee, then such claims should be filed by the bond owners themselves after the disclosure of the real facts and the appointment of their proper attorneys to act in their behalf.

(h) Class C Claim No. 15

should be disallowed because the claimant, Nomis-Suartz Corporation, is a corporation organized and controlled by the officers and directors of S. W. Straus & Co. and such claim, if any, should be payable by them because of the matters
47 and things appearing in the complaint of Nettie Meyer which are hereby adopted by these objectors as incorporated herein and made a part hereof.

For the foregoing reasons objectors by Shulman, Shulman and Abrams, their attorneys, object to the Plan of Reorganization and ask that the Court may grant the proper relief.

SHULMAN, SHULMAN AND ABRAMS,
Attorneys for said objectors.

State of Illinois, }
County of Cook. } ss:

Meyer Abrams, being first duly sworn on oath deposes and says, that he is the duly authorized agent and attorney for the foregoing objectors, that he has read the foregoing objections prepared by him in their behalf and knows the contents thereof, and that he is of the opinion that they are well founded in point of law and are based on the matters and things which appear of record in this proceeding.

MEYER ABRAMS.

Subscribed and sworn to before me this 20th day of April, A. D. 1935.

YETTA MAILICK, (Seal)
Notary Public.

40 And on, to-wit, the 27th day of April, 1935, came the Objectors by their attorneys and filed in the Clerk's office of said court a certain Proposed Amendment to Plan in words and figures following, to-wit:

IN THE DISTRICT COURT OF THE UNITED STATES.
* * (Caption—58701) * *

PROPOSED AMENDMENT TO PLAN OF REORGANIZATION SUBMITTED BY ANNA JACOBSON, JACOB MEYERHOFF, JOHN G. PANKIN, MRS. RAE MANN, JOSEPH MEYERHOFF and JULIUS MEYERHOFF.

Now come objectors, Anna Jacobson, Jacob Meyerhoff, John G. Pankin, Mrs. Rae Mann, Joseph Meyerhoff and Julius Meyerhoff, by Shulman, Shulman and Abrams, their attorneys, and propose the following amendment to the Plan of Reorganization.

(1) That the court appoint disinterested persons as trustees of the properties of the Debtor upon suggestions of the bondholders or their counsel in such number as the court may think advisable to be vested with the full, legal and equitable title to the property and the rights of the beneficiaries shall be treated as personalty.

(2) That the trustees issue beneficial certificates to each first mortgage bond owner on the basis of one certificate for each $100.00 bond to be known as Class "A" certificates, and superior to all other classes.

(3) That the trustees issue class "B" certificates to all junior interests on the basis of one share for each $100.00 claim, subject and interior to class "A".

43 (4) That the trustees issue class "C" certificates to the stockholders, if any, of the Debtor on the basis of one certificate for each share subject and inferior to classes "A"' and "B".

(5) That the trust shall last for such number of years as the court may fix and during such term the trustees shall pay out of the income from the net proceeds after payment for operating expenses, taxes, insurance, etc. interest on class "A" not exceeding 6%, and the remainder, if any, on class "B" not exceeding 3%.

(6) At the expiration of the term of the trust the property is to be sold subject to the approval of the court, and the proceeds realized therefrom be paid first, to satisfy class "A"

in full; then the balance, if any, to satisfy class "B", and the remainder, if any, to be distributed to the holders of class "C".

(7) During the operation of the trust the court shall retain jurisdiction for the purpose of passing upon the Trustee's accounts and the allowance of fees.

(8) The trustees shall be vested with the right to enforce the liability of the defendants who are parties in the State Court proceedings for the benefit of class "A".

(9) The court is to make an appraisal of the value of the Debtor's property, and the parties liable for gross negligence be adjudged to pay whatever damages may be assessed against them in the State court proceedings, and to be applied in satisfaction of the difference between the appraised value and the amount due.

(10) All fees of the trustees in the foreclosure cases, the fees of the committees, and the Depositary, shall be disallowed.

(11) Notice of the proposed amendment to be given to all bondowners together with a statement of the facts involved in the State court proceedings so that they may avail themselves of their rights and vote upon this amendment to the plan.

(12) The court may reserve the question of fees of the several attorneys for future disposition.

Respectully submitted,

SHULMAN, SHULMAN & ABRAMS,
Attorneys for said objectors.

50 And afterwards, to-wit, on the 20th day of May, 1935, being one of the days of the regular May term of said Court, in the record of proceedings thereof, in said entitled cause, before the Honorable John P. Barnes, District Judge, appears the following entry, to-wit:

51 IN THE DISTRICT COURT OF THE UNITED STATES.
* * (Caption—58701) * *

ORDER.

Pursuant to order of this court entered on February 27, 1935, this cause has come on to be heard on the motion of George W. Rossetter, Jay C. McCord and Sidney H. Kahn,

as The Sovereign First Mortgage Bondholders' Committee constituted under Deposit Agreement dated April 21, 1931 and as The Sovereign Annex First Mortgage Bondholders' Committee constituted under Deposit Agreement dated January 23, 1931, on behalf of certain holders of Sovereign 6% First Mortgage Gold Bonds and on behalf of certain holders of Sovereign Annex 6½% First Mortgage Gold Bonds which are secured by lien of first mortgage trust deeds upon the property here involved and upon the motion of the Debtor and of J. Gold, R. Sandroff and S. Isenberg who filed the creditors' petition herein for an order confirming and approving the plan of reorganization and amendment to the plan of reorganization filed herein by said committees and submitted to the creditors and stockholders of the Debtor and upon the objections to the said plan and amendment to said plan and to certain claims filed herein and for a further order authorizing and directing the Debtor and said committees to carry said plan of reorganization including said amendment to the plan of reorganization into effect;

And it appearing to the court:

(a) That the provisions of said order of February 27, 1935 with respect to the giving of notice and publication of this hearing and the mailing of a copy of said plan of reorganization or a summary thereof together with a copy of said notice have been complied with;

(b) That the provisions of the order entered on February 27, 1935 dividing the creditors and stockholders of the Debtor for the purpose of the plan of reorganization proposed in this proceeding and the acceptance thereof into classes according to the nature of their respective claims and interests, with respect to the giving of notice of such classification to creditors and stockholders of the Debtor and with respect to publication have been complied with.

(c) That by the order of this court entered herein on February 27, 1935, Carl R. Chindblom, one of the referees in bankruptcy of this court, was directed to report to the court the names of all persons filing proofs of claims or interests herein, the class or classes to which the said claims or interests belonged and the amounts thereof together with a statement as to what, if any, objections to any of the said proofs

of claims or interests have been filed; that the said Carl R. Chindblom has filed herein as a special master his report on the filing of and classification of claims and interests of creditors and stockholders and on objections to proofs of such claims and interests and his supplemental report thereon.

53 (d) A claim has been filed herein by Melvin L. Straus, trustee under trust deed securing the Sovereign 6% First Mortgage Gold Bonds on behalf of the holders of all outstanding and unsubordinated first mortgage bonds in the aggregate principal amount of $575,000; that pursuant to the order of this court said claim should be reduced to the extent of the claims filed by said Sovereign First Mortgage Bondholders' Committee and by individual bond owners; that said claim is numbered 17 and has been classified by the special master under Class A-2; that objections have been filed thereto;

(e) That a claim has been filed herein by Samuel J. T. Straus, trustee under the trust deed securing said Sovereign Annex First Mortgage Bonds on behalf of the holders of all outstanding and unsubordinated said first mortgage bonds in the aggregate principal amount of $798,000; that pursuant to the order of this court the said claim should be reduced to the extent of the claims filed by said Sovereign Annex First Mortgage Bondholders' Committee and by individual bond owners; that said claim is numbered 16 and has been classified by the special master under Class A-2; that objections have been filed to the said claim;

(f) A claim has been filed herein by George W. Rossetter, Jay C. McCord and Sidney H. Kahn, constituting the Sovereign First Mortgage Bondholders' Committee under Deposit Agreement dated April 21, 1931, on behalf of the holders
54 of $543,600 principal face amount of unsubordinated Sovereign 6% First Mortgage Bonds dated November 1, 1919; (that claims have been filed herein by certain individual holders of certificates of deposit of bonds deposited with said committee in the amount of $12,800.00); that said persons as The Sovereign Annex First Mortgage Bondholders' Committee constituted under Deposit Agreement dated January 23, 1931 have filed a claim herein on behalf of the holders and owners of $764,100 principal face amount of unsubordinated Sovereign Annex First Mortgage Bonds dated August 1, 1922; (that claims have been filed herein by certain individual hold-

ers of certificates of deposit of bonds deposited with said committee in the amount of $19,200.00); that the said claim of The Sovereign and Sovereign Annex Committees is numbered thirteen (13) and has been classified by the special master under Class A-2; that objections have been filed to the said claim;

(g) A claim has been filed herein by Melvin L. Straus trustee under the trust deed securing the Sovereign First Mortgage Bonds on behalf of the owner of certain due and unpaid subordinated bonds and certain outstanding, due and unpaid subordinated interest coupons, the said claim being in the total sum of $202,308.22 with interest thereon at the legal rate from and after December 11, 1931; that said claim is numbered seventeen (17) and has been classified by the special master under Class B; that objections have been filed thereto;

(h) A claim has been filed herein by Samuel J. T. Straus, as trustee under the trust deed securing the Sovereign Annex First Mortgage Bonds on behalf of the owner of certain due and unpaid subordinated bonds and certain outstanding, due and unpaid subordinated interest coupons and certain outstanding, due and unpaid unsubordinated interest coupons in the amount of $173,574.34, together with interest thereon at the legal rate from December 28, 1931; that the said
55 claim is numbered 16 and has been classified by the special master as of Class B; that objections have been filed to the said claim;

(i) A claim has been filed herein by Nomis-Suarts Corporation, a corporation, in the amount of $73,371.45, which claim is numbered 15 and has been classified by the special master under Class C; that objections have been filed thereto;

(j) That the said Sovereign First Mortgage Bondholders' Committee and Sovereign Annex First Mortgage Bondholders' Committee, respectively, as the holders and owners of $543,600 principal face amount of Sovereign First Mortgage Bonds and of $764,100 principal face amount of Sovereign Annex First Mortgage Bonds have on behalf of the said owners and holders filed their acceptance of the plan of reorganization as amended; that therefore the owners and holders of more than 66⅔% of said first mortgage bonds have accepted said plan of reorganization as amended;

(k) That the acceptance of the holders of all of the two hundred (200) shares of the capital stock of the Debtor to the plan of reorganization as amended has been filed herein; that acceptances of the respective owners of all the claims classified as Class B and as Class C by the special master have been filed herein;

56 (l) That the joint and several objections of Anna Jacobson, Jacob Meyerhoff, John G. Pankin, Mrs. Rae Mann, Joseph Meyerhoff and Julius Meyerhoff by Shulman, Shulman & Abrams their attorneys have been filed herein to the following claims:

(a)	Class A (1)	Claim No. 17
(b)		Claim No. 16
(c)	Class A (2)	Claim No. 17
(d)		Claim No. 16
(e)		Claim No. 13
(f)	Class B	Claim No. 17
(g)		Claim No. 16
(h)	Class C	Claim No. 15

that the document setting forth the said objections to said claims also contains objections by the said objectors to the plan of reorganization, as amended; that objections by William H. Melvin by David K. Tone and Benjamin H. Black, his attorneys have been filed herein to the above specified and enumerated claims and that the said objections have incorporated therewith objections to the plan of reorganization, as amended; that no objections other than those hereinabove set forth have been filed to the claims filed herein, to the classification of creditors or to the plan of reorganization as amended herein; THEREUPON—

THE COURT DOTH FIND, ORDER, CONSIDER, ADJUDGE AND DECREE as follows:

1. That this proceeding was instituted in good faith and was properly brought under the provisions of Section 77B of "An Act to Establish a Uniform System of Bankruptcy Throughout the United States" (hereinafter referred to as Section 77B), the Debtor being unable to meet its obligations as they matured.

57 2. The Debtor is not a utility subject to the jurisdiction of a regulatory commission and the provisions of subdivision (e) 2 of Section 77B do not apply.

3. That the report of Carl B. Chindblom, Referee in Bankruptcy, as special master, on the filing and classification of claims and interests of creditors and stockholders and on objections to proofs of such claims and interests and his supplemental report made pursuant to the order of this court be and the same hereby are approved and confirmed in all respects.

4. That the aforementioned objections of Anna Jacobson, Jacob Meyerhoff, John G. Pankin, Mrs. Rae Mann, Joseph Meyerhoff, Julius Meyerhoff and William H. Melvin to the claim of Melvin L. Straus, as trustee, on behalf of the holders of the outstanding, due and unsubordinated Sovereign First Mortgage Bonds found in Claim 17, which has been classified as Class A-2 be and they hereby are overruled; that the said claim in the aggregate principal amount of $575,000 is reduced to the extent of the claim filed by said Sovereign First Mortgage Bondholders' Committee in the amount of $543,600
58 and of the claims filed by individual bondholders in the amount of $1,100.00; that the said claim of Melvin L. Straus is hereby allowed in the amount of $30,300.00 and the said claims of individual bondholders are allowed in the amount of $1,100.00.

5. That the objections of the aforesaid objectors to the claim of Samuel J. T. Straus, as trustee, on behalf of the holders of the outstanding, due and unpaid Sovereign Annex First Mortgage unsubordinated bonds, which claim is found in Claim 16 and is classified under Class A-2 be and the same hereby are overruled; that the said claim is reduced to the extent of the claim of The Sovereign Annex Bondholders' Committee in the amount of $764,100 and of the claims filed by individual bondholders in the amount of $3,500.00; that the said claim of Samuel J. T. Straus as trustee is hereby allowed in the face principal amount of $30,400.00 and the claims of the said individual bondholders are allowed in the aggregate principal amount of $3,500.00.

6. That the objections of the aforesaid objectors to the claim of George W. Rossetter, Jay C. McCord and Sid-
59 ney H. Kahn as The Sovereign First Mortgage Bondholders' Committee on behalf of the holders and owners of Sovereign First Mortgage Bonds and as The Sovereign Annex First Mortgage Bondholders' Committee on behalf of the holders and owners of Sovereign Annex First Mortgage

Bonds, which claim is claim numbered 13 and classified as Class A-2 be and the same hereby are overruled; that the said claim as to Sovereign first mortgage bonds is in the amount of $543,600; that claims have been filed by individual holders of certificates of deposit of said bonds deposited with the said committee in the amount of $12,800.00; that the claim of the said committee and the claims of the said individual holders of certificates of deposit as to said Sovereign bonds are allowed, the aggregate of said allowances, however, not to exceed the sum of $543,600; that the said claim as to Sovereign Annex first mortgage bonds is in the amount of $764,100; that individual holders of certificates of deposit of said bonds deposited with the committee have filed claims in the amount of $19,200.00; that the claim of the committee and the claims of said individual holders of certificates of deposit on Sovereign Annex bonds are allowed, the aggregate of said allowances not to exceed the sum of $764,100.

7. That the objections of the aforesaid objectors to the claim of Melvin L. Straus, as trustee, on behalf of the owner of certain subordinated Sovereign bonds which claim is set forth in claim numbered 17 and is classified under Class B be and the same hereby are overruled and the said claim is hereby allowed; that the objections of the aforesaid objectors to the claim of Samuel J. T. Straus as trustee on behalf of the owner of certain subordinated Sovereign Annex bonds, which claim is set forth in claim numbered 16 and is classified under Class B be and the same hereby are overruled and the said claim is hereby allowed.

8. That the objections of the aforesaid objectors to the claim of Nomis-Suarts Corporation, filed herein as Claim 15 and classified under Class C be and the same hereby are overruled and the said claim is allowed.

9. That the objections of the aforesaid objectors filed herein to the claim of Melvin L. Straus, as trustee under the Sovereign Trust deed for trustee's fees and solicitors' fees, said claim being a part of Claim 17 and classified under Class A-1 be and the same hereby are reserved to the hearing of all claims for administration expenses; that the claim of Marguerite Gorman, executrix of the estate of George E. Gorman, deceased, which is numbered 14 and is classified under Class A-1 is also reserved for hearing and disposition at the same time.

10. That the objections of the aforesaid objectors to the claim of Samuel J. T. Straus as trustee under the Sovereign Annex trust deed for trustee's and solicitors'-fees contained in Claim numbered 16 and classified under Class A-1 be
61 and the same hereby are reserved to the hearing of all claims for administration expenses.

11. That the plan of reorganization as amended has been accepted in writing and such acceptances have been filed in this proceedings by or on behalf of creditors holding more than two-thirds in amount of each class whose claims have been allowed and would be affected by said plan of reorganization and by and on behalf of stockholders of the Debtor holding more than a majority of shares of each class as required by the provisions of Section 77B; that provisions of Section 77B relating to said plan of reorganization and the acceptance and confirmation thereof have been duly complied with to make the same effective and binding upon the Debtor and all of said bondholders and all creditors of the Debtor whether or not their claims have been filed.

12. That the Sovereign First Mortgage Bondholders' Committee and the Sovereign Annex First Mortgage Bondholders' Committee had authority to act in these proceedings and to accept the plan of reorganization as amended for and on behalf of the persons who deposited unsubordinated first mortgage bonds with said committees respectively.

13. That all amounts to be paid by the Debtor for expenses and services incident to the reorganization are subject to the approval of this court.

62 14. That the offer of the plan of reorganization and its acceptance are in good faith and have not been made or procured by any means or promises forbidden under said Section 77B.

15. That the Debtor is authorized by its charter and by applicable State and Federal laws to take all necessary steps to carry out the provisions of the said plan of reorganization as amended.

16. That on the motion of the court the said plan of reorganization as amended should be further amended and it hereby is amended as follows:

A. That paragraph numbered 2 on page 3 of the plan of reorganization be and it further is amended to the effect that two of the three trustees therein provided for to receive all of the authorized common stock of the new corporation shall be selected by the court and not by the committees;

B. That paragraph numbered 3 on page 4 of the plan of reorganization be and it is further amended so as to provide that the agent and depositary of the trustees therein provided for shall be designated by the court and that the said agent and depositary shall be entitled to such compensation for its duties not to exceed, however, the usual compensation, as shall be stated in a letter prepared and signed by such agent and depositary and by it filed, one copy with the new corporation and one copy with the court;

C. That paragraph numbered 4 on page 5 of the plan of reorganization shall be and it is amended to the effect that
63 the trustees therein mentioned shall not be indemnified and saved harmless by the new corporation from or against their bad faith;

D. That paragraph numbered 5 on pages 5 and 6 of the plan of reorganization be and it is further amended to the effect that a mortgage may be placed upon the property of the reorganized corporation for the purpose of paying taxes but during the time this court has jurisdiction over the trust to be created pursuant to the plan of reorganization and over the trustees from time to time acting under the trust agreement no mortgage shall be placed upon the said property for any other purpose except upon the order of this court; and further amended to the effect that all expenses of reorganization and of the foreclosure proceedings on the Sovereign First Mortgage Trust Deed and the Sovereign Annex First Mortgage Trust Deed that are not paid in cash shall be evidenced by certificates of the new corporation bearing 5% interest per annum, which certificates shall be so drafted that neither the said certificates nor the obligations thereof may be reduced to or converted into judgments;

E. That paragraph numbered 4 on page 3 of the amendment to the plan of reorganization of the Sovereign and Sovereign Annex be and it is amended so as to provide that the

agent of the trustees shall be designated by the court and not by the committee as therein now provided; and also so as to provide that the trustees therein provided for shall each receive in lieu of the compensation therein now provided for one-third of 1% of the annual gross income derived from the rental of the rooms of the said property or the sum of $300.00 whichever shall be less;

F. That paragraph numbered 5 of the amendment to the plan of reorganization be and it is amended so as to pro-
64 vide that a mortgage may be placed upon the property of the reorganized corporation for the purpose of paying taxes levied and assessed against the property but during the time this court has jurisdiction over the trust to be created pursuant to the plan of reorganization and over the trustees from time to time acting under the trust agreement no mortgage shall be placed upon the said property for any other purpose except upon the order of this court; and said paragraph is further amended to the effect that any unpaid expenses of reorganization or of the foreclosures shall be evidenced by certificates of the new corporation bearing interest at the rate of 5% per annum, which certificates shall be so drafted that neither the said certificates nor the indebtedness evidenced thereby may be reduced to or converted into judgments;

G. That the said plan of reorganization and the said amendment to the plan of reorganization be and they are further amended and modified so as to provide that all allowances for services rendered in the reorganization of the said property in this court, for services in and about the said foreclosure proceedings, for services for the said committees, for the depositary and for the attorneys, agents and servants of the same are subject to the approval of this court.

H. The said plan of reorganization as amended shall be and it is further amended so as to provide that in the event there is any cause or causes of action in the Debtor or in any person, firm or corporation for and in behalf of the Debtor such cause or causes of action shall be preserved and the same shall be assigned and passed on by the Debtor or by such person, firm or corporation in behalf of the Debtor to the new or reorganized corporation.

17. That the amendment to the plan of reorganization forming a part of Exhibit "C" attached to the joint intervening petition of the bondholders' committees herein does not materially or adversely affect the interests of any creditors or stockholders who have heretofore assented to the plan of reorganization and that therefore no opportunity need be given such creditors or stockholders to withdraw the assents heretofore given by them.

18. That the said plan of reorganization was submitted by the said committees as the owners and holders of not less than 25% in amount of claims that are affected by said plan of reorganization as amended and not less than 10% in amount of all the claims against the Debtor; that the court hereby finds that the amendments herein made on the motion of the court do not materially or adversely affect the interests of any creditor or stockholder of the Debtor; that the said plan of reorganization as amended herein and hereby is fair and equitable and does not discriminate unfairly in favor of any class of stockholders or creditors of the Debtor and is feasible and complies with the provisions of subdivision (b) of Section 77B; that the plan of reorganization as hereby and herein amended is hereby approved, confirmed and decreed to be in full force, virtue and effect.

19. That the proposed amendments to the plan of reorganization as amended submitted by Anna Jacobson, Jacob Meyerhoff, John G. Pankin, Mrs. Rae Mann, Joseph Meyerhoff and Julius Meyerhoff and by William H. Melvin be and they hereby are disallowed except to the extent that the amendments to the plan of reorganization herein incorporated on the court's motion may be provided for in the
66 said proposed amendments of said persons or any or either of them.

20. That the Debtor and the said Committees, with the cooperation of counsel for the Debtor, for said Committees and for the petitioning creditors, are hereby directed to proceed forthwith to take such action and to prepare and execute or cause to be executed such documents as may be necessary fully to comply with and carry out the provisions of the said plan of reorganization, as amended, and the court hereby retains jurisdiction to supervise the preparation and execution of said documents and to pass upon and approve the provisions therein contained.

21. In the event fifty-one per cent (51%) or more in amount of the first mortgage bondholders of the Sovereign and Sovereign Annex issues of bonds do not in the referendum provided for in said plan vote against the creation of a trust and the common stock of the new corporation is to be issued to trustees as in the plan provided, the court hereby designates Paul W. Cleveland and Melvin M. Hawley to serve as trustees under the trust agreement and hereby approves the nomination of the bondholders' committees of Paul Steinbrecher as one of the trustees.

22. That the Debtor and the said Committees shall report in writing to this court on or before July 9, 1935, all acts and things done and performed by them in the execution and consummation of said plan of reorganization as amended and the documents incidental thereto and this cause is hereby continued until said date without further notice for the purpose of examining and confirming said report.

67 23. That this cause also stands continued to June 25, 1935 without further notice, at which time the court will consider and pass upon all allowances of fees and charges in connection with the reorganization and with the said foreclosure proceedings including the fees of counsel for the Debtor, for the said committees, for the petitioning creditors and all other fees; that all persons and parties asking fees are directed to file herein prior to said date their petitions setting forth the services rendered.

24. And it appearing to the court that Robert M. Sweitzer, County Treasurer and ex-officio County Collector of Cook County is now in possession of the premises as receiver in a certain cause for the appointment of a tax receiver in the Circuit Court of Cook County, No. 34C13891, and that he has agreed to surrender possession of the premises to the new corporation upon its undertaking to apply all the net income of the property on account of general taxes levied and assessed against the property, the said Robert M. Sweitzer, County Treasurer and ex-officio County Collector of Cook County is hereby directed upon the new corporation entering into such undertaking, to surrender possession of the property to said new corporation; that at the same time he shall assign to the new corporation all accounts receivable and deliver to the new corporation all books and records nec-

essary to carry on the business of the premises; that
68. the new corporation shall assume the accounts payable of said receiver as of the date of surrender of possession but if the amount of said accounts payable exceeds the amount of the accounts receivable less reserves for bad debts, then the said receiver shall pay over to the new corporation to the extent available cash held by the receiver equal to the difference between said accounts receivable less reserves and said accounts payable.

25. The court hereby reserves jurisdiction over the trust if any to be created pursuant to the plan of reorganization and over the trustees from time to time acting as trustees under said trust agreement for the purpose of supervising the acts and doings of such trustees and for the purpose of protecting and safeguarding in all respects the rights of the holders of the trust certificates from time to time outstanding and reserves jurisdiction over the property in any and all matters involving said trustees or the holders of such trust certificates. Each and all of the holders and owners of the trust certificates from time to time outstanding shall be and they hereby are forever jointly and severally enjoined from commencing or prosecuting proceedings of any nature whatsoever against the Debtor or the new corporation or against any of the property of the Debtor or the new corporation or against the trustees or any of them without first obtaining the consent of this court after due notice to all parties in interest. Said trustees shall file annually a report showing the receipts and disbursements for each calendar year and shall periodically send or cause the new corporation to send reports covering the operations of the property to all stockholders and certificate holders.

69 26. Each and all of the owners and holders of bonds and interest coupons secured by the Sovereign First Mortgage Trust Deed recorded December 22, 1919, as Document No. 6699724, and by the Sovereign Annex First Mortgage Trust Deed recorded November 16, 1922, as Document No. 7717203 be, and they hereby are forever jointly and severally enjoined from commencing or prosecuting any proceedings of any nature whatsoever against the Debtor, its successors or assigns, or against any of the property of the Debtor or the new corporation on any of said bonds or interest coupons or said Trust Deeds, or either of them.

27. That the said committees be, and they hereby are directed pursuant to the said plan of reorganization to conduct forthwith a referendum of the first mortgage bondholders of the Sovereign and Sovereign Annex issues of bonds to determine whether or not the said bondholders desire to have the stock of the new corporation to be issued for their benefit, deposited under a trust agreement as provided in the said plan of reorganization; that the committees are directed to report to this court their doings in this respect and the result of the referendum.

28. The court reserves jurisdiction herein to enter such further orders as hereinafter may be deemed necessary or proper in connection with carrying out the terms and provisions of said plan of reorganization, as amended, and of this order and for terminating this cause.

Enter this the 20th day of May, 1935.

Barnes,
Judge.

70 IN THE DISTRICT COURT OF THE UNITED STATES.
* * (Caption—58701) * *

STATEMENT OF EVIDENCE.

BE IT REMEMBERED that on April 27, 1935, this case further came on to be heard before the Honorable John P. Barnes, on the report and supplemental report of Carl R. Chindblom, Referee in Bankruptcy, and on the motion of the Sovereign First Mortgage Bondholders' Committee and of the Sovereign Annex First Mortgage Bondholders' Committee, and of the debtor and of the petitioning creditors, for approval of the plan of reorganization as amended, and on the objections to said plan of reorganization as amended, and that at the hearing thereof, there appeared Meyer Abrams of Shulman, Shulman & Abrams, on behalf of certain objectors, David K. Tone, on behalf of another objector, Max Frederick Goldberg, on behalf of the debtor, Bernard Nath of Sonnenschein, Berkson, Lautmann, Levinson & Morse, Arthur M. Cox of Judah, Reichmann, Trumbull, Cox & Stern, Claude A. Roth and Harry E. Smoot of Gottlieb & Schwartz, on behalf of the

Bondholders' Committees, and Irving H. Flamm, on behalf of the petitioning creditors, and thereupon argument was had with respect to the plan of reorganization as amended and the objections thereto, and that during such argument the following ensued:

71 1. Meyer Abrams made the statement that the property was in possession of Robert M. Sweitzer, County Collector, as receiver under the so-called "Skarda Act" and that Harry W. Solomon, a former officer of S. W. Straus & Co., was acting as agent for the County Collector and was receiving as his compensation six per cent (6%) commission. This statement was denied by a representative of State's Attorney Thomas J. Courtney, who stated that the compensation was three per cent (3%) and this was verified by counsel for the Committees.

2. Mr. Meyer Abrams stated that the ten per cent (10%) stock interest to go to the junior interests as set forth in the reorganization plan, was going to persons connected with S. W. Straus & Co. Thereupon counsel for the Bondholders' Committees stated to the court that, as shown by the plan, seven and one-half per cent (7½%) of the stock was to be issued to S. W. Assets Liquidation Corporation and two and one-half per cent (2½%) to Nomis Suarts Corporation; that S. W. Assets Liquidation Corporation had been organized by approximately ninety-six per cent (96%) in amount of the creditors of S. W. Straus & Co., who had purchased all of the assets of S. W. Straus & Co. at a receiver's sale in the equity proceedings involving S. W. Straus & Co., and that no person in any way connected with S. W. Straus & Co. at any time was or ever had been an officer, director or stockholder, or in any way financially interested in S. W. Assets Liquidation Corporation. Counsel further stated that persons formerly connected with S. W. Straus & Co. were officers and directors of Nomis Suarts Corporation and were financially interested in Nomis Suarts Corporation, but that said corporation was heavily indebted and that any recovery made by Nomis Suarts Corporation would undoubtedly go to its creditors and not to persons connected with S. W.
72 Straus & Co. A similar statement with respect to S. W. Assets Liquidation Corporation was made by Frank Klaas, associated with Arthur J. Hughes, the attorney for S. W. Assets Liquidation Corporation.

3. Counsel for the Bondholders' Committees explained the manner in which the interest of S. W. Assets Liquidation Corporation and Nomis Suarts Corporation in the property had been acquired. They stated that, prior to February 1931, S. W. Straus & Co., in accordance with its general policy, had advanced funds necessary to meet payments of interest and principal prepayments on the Sovereign and Sovereign Annex first mortgage bonds and interest coupons; that as shown by the plan of reorganization, the principal amount of each of said bond issues has been substantially reduced; that to a large extent, such reduction in the principal amount of said bond issues has been made possible by advances of S. W. Straus & Co., who purchased the maturing bonds and interest coupons in accordance with the terms and provisions of the mortgage trust deeds and thereupon voluntarily subordinated such bonds and interest coupons so acquired by them to the outstanding bonds and interest coupons in the hands of the general public; that for a number of years prior to February 1931, the income from the property had not been enough to meet the payments of principal and interest on said bond issues and that S. W. Straus & Co. had advanced the deficit in order that the maturing bonds and interest coupons might be met; that the interest of Nomis Suarts Corporation was acquired in the same manner, said corporation having supplied a portion of the funds advanced by S. W. Straus & Co. to holders of bonds and interest coupons; that the total of these advances aggregated $396,900. in excess of all sums derived from the operation of the property.

73 4. Counsel for the Bondholders' Committees stated that the complaint of Nettie Meyer in the case of Meyer *vs.* Kenmore-Granville Hotel Company, Superior Court of Cook County, Illinois, Number 35 S 2153 had been filed in the Superior Court of Cook County four days after the institution of this proceeding, namely, on February 8, 1935.

5. Mr. Meyer Abrams stated that there were no debtor and no creditors because the debtor was not personally liable for the payment of Sovereign and Sovereign Annex first mortgage bonds and interest coupons; whereupon counsel for the debtor stated that the debtor corporation had expressly assumed payment of said bonds before these proceedings were instituted.

6. Counsel for the Bondholders' Committees stated that the members of the Bondholders' Committees were George W. Rossetter, Jay C. McCord and Sidney H. Kahn, and that neither Mr. Rossetter nor Mr. McCord had ever in any manner, directly or indirectly, been associated with S. W. Straus & Co. or any of its affiliated companies.

7. In addition to the foregoing, there was a full discussion between counsel and the court of each and all of the provisions of the proposed plan of reorganization. After the argument had been concluded, the court was given a copy of the plan of reorganization as amended, also copies of the objections, and stated that he would take the matter under advisement and advise counsel when he was ready to give his opinion; that thereafter on the 4th day of May, 1935, the court handed down its opinion as follows:

74 IN THE DISTRICT COURT OF THE UNITED STATES.

* * (Caption—58701) * *

MEMORANDUM.

This matter came on to be heard upon the plan of reorganization proposed by George W. Rossetter and others, as a committee, and amendments thereto filed by said George W. Rossetter and others, as such committee, objections to said plan, as amended, by William H. Melvin, objections to said plan by Anna Jacobson and others, the report and supplemental report of Carl R. Chindblom, Referee, as special master, and upon a proposed amendment to the plan of reorganization submitted by Anna Jacobson and others, and the court having heard and considered the arguments of counsel, and being now fully advised in the premises, finds that the plan filed by said George W. Rossetter and others, as amended, should be approved, subject to the following conditions:

(a) Paragraph numbered "2" on page 3 of the Plan provides that "all of the authorized common stock of the New Corporation shall be issued to three trustees (hereinafter referred to as the 'Trustees') to be selected by the Committees." This provision shall be so modified as to provide that two of the three trustees shall be selected by the court.

(b) Paragraph numbered "3" on page 4 of the Plan provides that "Straus Service Corporation, an Illinois corporation, shall be the agent and depositary of the Trustees and shall be entitled to the usual compensation for the performance of its duties." This provision shall be so modified that the agent and depositary of the Trustee shall be designated by the court, and so as to further provide that said agent and depositary shall be entitled to such compensation for its duties, not exceeding the usual compensation, as shall be stated in a letter prepared and signed by it and filed, one copy with the corporation and one with the court.

(c) Paragraph numbered "4" on page 5 provides that "The New Corporation shall *** indemnify and agree to save the trustees" (mortgage trustees) "harmless from any and all other claims against said trustees arising out of the trustees' operation of the properties." This provision shall be so modified as to provide that said trustees shall not be indemnified or held harmless against their bad faith.

(d) Paragraph numbered "5" on pages 5 and 6 of the Plan shall be so modified as to provide that no mortgage shall be placed upon the property of the reorganized corporation for any purpose except to pay taxes, and so as to further provide that the expenses of the reorganization, of the foreclosures, which are not paid in cash shall be evidenced by certificates bearing five per cent. (5%) interest per annum, which certificates shall be so drawn as to prevent their being converted into judgments.

(e) Paragraph numbered "4" on page 3 of the amendment to the plan provides that the Committee shall designate the agent of the trustees, subject to the approval of the court. This provision shall be modified so as to provide that the agent of the trustees shall be designated by the court.

(f) A further provision in paragraph numbered "4" of the amendment to the plan that "The Trustees shall be entitled to be recompensed for their expenses and shall receive reasonable compensation for their services, which shall not exceed in the aggregate 1% of the annual gross income derived from the rental of rooms in the property" shall be so modified as to provide that the trustees each shall

76 receive per year one-third of one per cent. of the annual gross income derived from the rental of the rooms in the property or $300, whichever shall be less.

(g) Paragraph numbered "5" of the amendment to the plan shall be so modified as to provide that no mortgage shall be placed on the property of the reorganized corporation except for the purpose of paying taxes. Said paragraph shall further provide that any unpaid allowances and expenses shall be evidenced by certificates bearing interest at the rate of five per cent. per annum, which certificates shall be so drawn as to prevent their being converted into judgments.

Both the plan and the amendment to the plan shall be so modified as to provide that all allowances for services rendered in the reorganization in this court, for services in or about the foreclosure proceeding, and for services of the committee, the depositary, and their attorneys, agents and servants shall be subject to the approval of this court.

William H. Melvin and Anna Jacobson and others object to the following claims:

(a)	Class A (1)	Claim No. 17
(b)		Claim No. 16
(c)	Class A (2)	Claim No. 17
(d)		Claim No. 16
(e)		Claim No. 13
(f)	Class B	Claim No. 17
(g)		Claim No. 16
(h)	Class C	Claim No. 15

The order may provide that the objections to claim Class A (1), Claim No. 17, shall be reserved to the hearing of all claims for administration expenses.

The order may provide that the objections to claim Class A (1), Claim No. 16, shall be reserved to the hearing of all claims for administration expenses.

77 The order may provide that the objections to claim Class A (2), Claim No. 17, may be overruled.

The order may provide that objections to claim Class A (2) Claim No. 16, may be overruled.

The order may provide that objections to claim Class A (2), Claim No. 13, may be overruled.

The order may provide that objections to claim Class B, Claim No. 17, may be overruled.

The order may provide that the objections to claim Class B, Claim No. 16, may be overruled.

The order may provide that objections to claim Class C, Claim No. 15, may be overruled.

(Note: The order to be prepared by counsel shall provide, of course, for the abatement of claims filed by the trustees on bonds to the extent that the holders of the bonds file claims in their own behalf.)

The proposed amendment to the plan of reorganization submitted by Anna Jacobson and others will be disallowed, except to the extent that the conditions of approval of the plan and amendments thereto hereinabove set forth may adopt the amendments proposed by Anna Jacobson. The amendment to the plan proposed by Anna Jacobson contemplates too complicated a plan of reorganization. Plans of reorganization should, especially in these real estate matters, be as simple as possible. Furthermore, it seems to the court that it is better, at the present time, to determine the relative rights, interests and preferences of all the parties in the property, so that when it comes time to sell the property there will not be a controversy, as there certainly would be a controversy if it were proposed to sell the property for enough to pay off Class A certificates and nothing was to be left for Class B or Class C certificates. As the court has indicated, the time to settle that controversy is at the present moment.

78 The proposed amendment of Anna Jacobson to the plan seems to be the preservation of a supposed cause of action against somebody, rather than the reorganization of this property and getting it out of court. The court has heretofore, in an oral opinion which was reduced to writing and filed herein on March 20th, 1935, adequately expressed its views concerning said cause of action. The plan of reorganization as amended shall be amended expressly to provide that if there is any cause of action, or if there are any

causes of action, in the debtor or in any person, firm or corporation for the debtor, such causes of action shall be preserved and passed to the reorganized corporation.

Counsel are requested to take up with the County Treasurer a proposal that the tax receiver be eliminated from the management of the property upon the undertaking of the reorganized corporation that all of the net income of the property be applied to the payment of taxes.

Counsel may forthwith prepare a draft of an order giving effect to the views of the court hereinabove expressed. This order may be presented to the court at 2 o'clock P. M. on Monday, May 13, 1935.

JOHN P. BARNES
Judge.

May 4, 1935.

79 That the foregoing is a true and accurate statement of all the proceedings had and taken in the foregoing cause in connection with the hearings on the plan of reorganization as amended.

Wherefore appellant Nettie Meyer prays that the statement of evidence of the appellant be settled, approved and allowed by the court as a true, full, correct and complete statement of all of the matters which transpired in court at the hearing of said cause for use in the appeal taken from the entry of the order approving the plan of reorganization.

MEYER ABRAMS,
Attorneys for Nettie Meyer, et al., Appellants.

The foregoing statement of evidence heretofore lodged in the office of the Clerk of this Court is in all respects hereby approved, settled and allowed as a true and complete statement of evidence on the trial of the above entitled action, and is ordered filed as a statement of evidence to be included in the record of appeal in the above styled cause. June 1, 1935.

JOHN P. BARNES,
United States District Judge.

80 IN THE DISTRICT COURT OF THE UNITED STATES.
(Caption—58701)

PETITION.

Your petitioner, Nettie Meyer, in her own behalf and on behalf of the other objectors represented by Shulman, Shulman and Abrams, says:

(1) That she has heretofore prosecuted an appeal which is now pending in the Circuit Court of Appeals of this Circuit.

(2) She is desirous of prosecuting an appeal from the entry of the order approving the Plan of Reorganization.

(3) She desires that the appeal bond heretofore filed also stand as the appeal bond in this cause.

Wherefore petitioners pray that an order may be entered accordingly.

NETTIE MEYER
Petitioner.

By SHULMAN, SHULMAN AND ABRAMS,
Her Attorneys.

81 And on, to wit, the 20th day of May, 1935, came the petitioner by her attorneys and filed in the Clerk's office of said Court a certain Assignment of Errors in the words and figures following, to wit:

IN THE DISTRICT COURT OF THE UNITED STATES.
(Caption—58701)

ASSIGNMENT OF ERRORS.

Now comes Nettie Meyer, together with all other objectors represented by Shulman, Shulman and Abrams, as they appear of record, and assign error from the entry of the order approving the Plan of Reorganization, and for reasons therefor, say:

(1) That the said Nettie Meyer has heretofore prosecuted an appeal to the Circuit Court of Appeals for the Seventh Circuit, and did by her appeal raise the questions of the jurisdiction of the court of the subject matter and the parties, as it more fully appears from the Assignment of Errors now on file, which is incorporated herein by reference and made a part hereof, and by reason therefor the court was without jurisdiction to enter the order approving the Plan of Reorganization, or to enter any order in the cause in connection with such proceedings.

(2) It affirmatively appears that there is no creditor and no debtor, and no property belonging to a debtor within the scope and purview of the Act, and that the order was therefore, improperly entered, and without jurisdiction.

(3) Insofar as the order placed the owners of junior interests on parity with the owners of the superior interest, the court was without jurisdiction to enter such order and was unfair and inequitable.

82 (4) The proceedings under Section 77B insofar as it deprived the State Court of its jurisdiction in a matter wholly foreign to bankruptcy is void and contrary to the spirit of the Constitution of the United States of America, and constitutes a usurpation of the Legislative Branch upon the Judiciary and is wholly void.

(5) The plan is inequitable and deprives the bondholders of the value of their securities, and it was the duty of the court to reject it, and if jurisdiction existed, to adopt the plan presented to it by some of these objectors.

Wherefore said Nettie Meyer in her own behalf and on behalf of all other objectors represented by Shulman, Shulman and Abrams, who join herein, prays that all orders made in this cause as well as the order approving the plan of reorganization made and entered May 20, 1935, be vacated and set aside and reversed, to the end that the proceedings be dismissed for want of jurisdiction, and that the plan be set aside as shocking to the conscience of a court of equity under which the bankruptcy court was acting in these proceedings.

SHULMAN, SHULMAN AND ABRAMS,
Attorneys for Nettie Meyer and other objectors.

83 IN THE DISTRICT COURT OF THE UNITED STATES.
(Caption—58701)

ORDER.

On motion of Shulman, Shulman and Abrams, attorneys for Nettie Meyer, and the Court being fully advised in the premises;

On petition of Nettie Meyer for leave to appeal from the entry of the order approving the plan in her own behalf and for the use and benefit of the other objectors represented by said Shulman, Shulman and Abrams;

It is ordered that the appeal be granted, and the bond heretofore filed by said Nettie Meyer for costs also stand as the bond in connection with this appeal.

ENTER: BARNES
Judge.

84 IN THE DISTRICT COURT OF THE UNITED STATES.
(Caption—58701)

PRAECIPE FOR RECORD.

To the Clerk of the District Court of the United States:

You are hereby authorized and directed to prepare a praecipe for record in connection with the appeal taken from the order entered May 20, 1935, and to include therein the following:

(1) Supplemental Report of Carl R. Chindblom, Referee in Bankruptcy, dated April 27, 1935.

(2) Objections of Anna Jacobson, *et al.* returned with said Master's Report.

(3) Order approving Plan entered May 20, 1935.

(4) Petition for allowance of appeal.

(5) Order allowing appeal.

(6) Assignment of Errors.

(7) Statement of Evidence when approved.

(8) Proposed amendment to plan.

SHULMAN, SHULMAN & ABRAMS,
Attorneys for Nettie Meyer, et al., Appellants.

85 IN THE DISTRICT COURT OF THE UNITED STATES.
(Caption—58701)

PRAECIPE FOR ADDITIONAL MATTERS FOR RECORD.

To the Clerk of the District Court of the United States:

You are hereby authorized and directed to prepare a Praecipe for Additional Matters for Record in connection with the appeal taken from the order entered in the above entitled cause on May 20, 1935, and to include therein the following:

1. Creditors' petition of J. Gold, R. Sandroff and S. Isenberg under Section 77B of the Bankruptcy Act;
2. Answer of Kenmore-Granville Hotel Company, a corporation, to petition of J. Gold, *et al.*;
3. Order of February 13, 1935, approving petition of J. Gold, *et al.*, as properly filed under Section 77B of the Bankruptcy Act and restraining and enjoining creditors from proceeding against Debtor;
4. Joint intervening petition of George W. Rossetter, Jay C. McCord and Sidney H. Kahn, as the Sovereign Annex First Mortgage Bondholders' Committee and the Sovereign First Mortgage Bondholders' Committee representing certain holders of the first mortgage bonds of said issues, filed pursuant to order of court entered on February 13, 1935, including Exhibit "C" thereto attached;

5. Order of February 27, 1935, granting leave to said intervening petitioners to file their petition proposing a plan of reorganization instanter.

IRVING H. FLAMM,
Attorney for petitioning creditors.

MAX FREDERICK GOLDBERG,
Attorney for Kenmore-Granville Hotel Company, a corporation, Debtor.

JUDAH REICHMANN TRUMBELL
COX & STERN,
SONNENSCHEIN BERKSON LAUTMANN
LEVINSON & MORSE,
GOTTLIEB AND SCHWARTZ,
Attorneys for George W. Rossetter, Jay C. McCord and Sidney H. Kahn, as the Sovereign Annex First Mortgage Bondholders' Committee and the Sovereign First Mortgage Bondholders' Committee.

86 The following pages numbered from 170 to 184 inclusive, are true copies of proceedings had and papers filed in the United States Circuit Court of Appeals, as called for by appellants' praecipe, filed July 12, 1935.

And on, to wit: On the seventh day of June, 1935, there was filed in the office of the Clerk of this court a petition of appellees to dismiss the appeal, which said petition is in the words and figures following, to wit:

87 IN THE UNITED STATES CIRCUIT COURT OF APPEALS.
* * (Caption—5531) * *

PETITION.

Now comes Kenmore-Granville Hotel Company, a corporation, Debtor, J. Gold, R. Sandroff and S. Isenberg, petition-

ing creditors and George W. Rossetter, Jay C. McCord and Sidney H. Kahn, as The Sovereign and The Sovereign Annex First Mortgage Bondholders' Committees, appellees herein, by their respective counsel, and move the court to dismiss the appeal of Nettie Meyer to the United States Circuit Court of Appeals for the Seventh Circuit allowed in the United States District Court, and in support of this motion appellees present the suggestions attached hereto.

MAX FREDERICK GOLDBERG,
Attorney for Debtor,

IRVING H. FLAMM,
Attorney for Petitioning Creditors,

CLAUDE A. ROTH,
HARRY E. SMOOT,
ARTHUR W. COX,
BERNARD NATH,
Attorneys for Committee,
Counsel for Appellees.

88 And on the same day, to-wit: On the Seventh day of June, 1935, there was filed in the office of the Clerk of this court a motion and petition for allowance of an appeal by this court, etc., which said motion and petition are in the words and figures following, to-wit:

89 IN THE UNITED STATES CIRCUIT COURT OF APPEALS.
(Caption—5531)

MOTION.

Now come Nettie Meyer, *et al.*, appellants, by Meyer Abrams, their attorney, and move as follows:

(1) That the transcript of record filed in case No. 5491 be filed in this cause and be considered as part of the record.

(2) That the Clerk be directed not to print the matters and things contained in the Additional Praecipe for Record filed by appellees.

(3) That the court may allow an appeal to revise and review the final order entered by the court on May 20, 1935, confirming and approving the Plan of Reorganization, and that such appeal be consolidated with this cause.

In support of the foregoing motions appellants herewith present their verified Petition.

MEYER ABRAMS,
Attorney for Appellants.

90 IN THE UNITED STATES CIRCUIT COURT OF APPEALS.
(Caption—5531)

PETITION.

To the Honorable Judges of the United States Circuit Court of Appeals for the Seventh Circuit:

Your Petitioners, Nettie Meyer, *et al.*, appellants, by Meyer Abrams, their attorney, respectfully show:

(1) That petitioner has heretofore prosecuted an appeal from the order approving the petition refusing to dissolve the Injunction and to dismiss the petition, and subsequent to the filing of the record, transcript and briefs on behalf of the appellant, this court sustained the motion of the appellees to dismiss the appeal on the ground that the District Court was without jurisdiction to grant the appeal.

(2) That during the pendency of the appeal a final order was entered in said cause on May 20, 1935, confirming the Plan of Reorganization with certain modifications, and that petitioner and others have petitioned the trial court for an appeal, and the appeal was allowed, and that the record in connection with said appeal is now on file in this cause.

(3) That appellees have filed an Additional Praecipe for the record, all of which matters are contained in the record, and in the printed transcript of the record on the former appeal, and that the matters contained in the record on the former appeal are pertinent to the issue involved in this appeal, and by reason thereof it is necessary to make the record heretofore filed in the appeal which was dismissed a part of the record in this cause; that the two records will
91 present to the court for review the complete subject

matter of this appeal, and that all of the matters and things contained in the Additional Praecipe were printed in the transcript of the record heretofore filed in the former appeal, and it will cause unnecessary expenses to re-print that part of the record.

(4) Petitioner therefore, petitions this court that the record in case No. 5491 together with the transcript of record stand as the record in this cause together with the record filed herein, and that the Clerk of the court be authorized and directed to only print the part of the record as ordered by appellants due to the fact that the part of the record desired to be printed by appellees is all included in the printed record which petitioner desires to be filed in this court.

(5) Petitioner has heretofore petitioned this court to grant an appeal to revise and review the order of May 20, 1935, due to the fact that petitioner was in doubt as to whether such appeal was properly prosecuted below, and in order to protect her rights, she asked that the appeal also be allowed by this court, but that this court denied the prayer of the Petition.

(6) That no reasons were given by the court for the denial of the Petition, and petitioner believes that the denial thereof was due to the fact that the order appealed from was not certified to this court, and in order to remove this objection, petitioner has now filed the record in this cause, which contains the order of May 20, 1935.

(7) Petitioner refers to the Assignment of Errors filed simultaneously with this Petition setting forth the errors made by the court below and giving the grounds of this appeal, and makes said Assignment of Errors a part hereof.

(8) The following is a statement of the undisputed facts upon which arises the important and fundamental ques-
92 tions of jurisdiction sought to be reviewed.

In November, 1919, a bond issue of $1,000,000.00 was executed by Sovereign Hotel and Building Corporation, an Illinois corporation, covering the hotel proper. In August, 1922, another bond issue was floated on the Annex. Both the Annex and the hotel are being operated as one unit by two separate trustees, and prior to the filing of the Creditors' Petition the County Treasurer was in possession as Receiver

under the Skarda Act. A junior bond issue of $250,000.00 was executed by the Hotel and the Annex corporations in November, 1922, and as a result of a foreclosure of the junior bond issue the interest of both corporations, which executed the bond issues, were completely wiped out, and title was acquired by Sidney H. Kahn, as a result of the foreclosure. He organized the Kenmore-Granville Hotel Company, which did not assume the debt.

Three creditors, owners of bonds, executed by the original mortgagors, filed a proceeding for corporate reorganization claiming that they were creditors under the Act, and that the new corporation was a Debtor under the Act.

The present corporation was never in possession of the property, and was organized for reorganization purposes under the State Court proceedings.

Prior to the approval of the Petition appellant filed her Complaint in the State Court alleging fraud and breach of trust duties, and sought the prevention of a fraudulent reorganization by an alleged Bondholders' Committee. The District Court approved the Petition as filed in good faith and enjoined the State Court proceedings.

An appeal was prosecuted from the ruling of the court, which is pending here on appeal in case No. 5491, reference being made to the Transcript of the Record and to the Brief on file.

Subsequent to the perfection of the appeal the District Court approved the Plan of Reorganization with certain modifications appellant prayed for an appeal from the entry
93 of the order aproving the Plan of Reorganization, and is now petitioning this court for leave to appeal here because of the doubt as to whether or not the appeal was properly taken below or should be taken here. The order from which the appeal is sought relegates the position of the bondholders to the holders of common stock, and gives to the junior interests 10% on parity with the interest of the first mortgage bondholders. It approved and allowed certain claims, and disapproved an amendment to the Plan presented by appellant. It permanently enjoined the prosecution of the suit in the State Court and retained jurisdiction of the subject matter.

(9) Appellant, Nettie Meyer, raised a jurisdictional question by her first appeal and is now reiterating her objection to the final order on the ground of lack of jurisdiction. She contends that there is no creditors, no debtor, or any debtor's property, subject to be administered under Section 77B. She also contends that the Bankruptcy Court was without jurisdiction to restrain the State Court proceeding involving fraud and breach of trusts, which are not within the purview of the Bankruptcy Act.

(10) Your petitioner respectfully requests that this Honorable Court exercise its discretion in favor of allowance of appeal herein on the following grounds:

(a) The appeal involves the important and fundamental question of jurisdiction which is at the threshhold of every proceeding.

(b) The question raised in this appeal is of public importance insofar as it involves the construction of Section 77B and the mode of appeal. If it be true that an appeal as of right cannot be taken from the approval of the Plan of Reorganization, no remedy is available to appeal from the fairness of the plan as this court could only decide on questions of law.

(c) The question whether a dummy corporation may be organized for the purpose of affecting a corporate reorganization under Section 77B is of great importance and should be squarely decided.

(d) The question whether Section 77B amends the Bankruptcy Law to confer jurisdiction on the Bankruptcy Court to deprive State Courts of their jurisdiction in matters excluded by the prior Bankruptcy Act is of vital importance.

(e) The question whether under Section 77B the court may
94 permanently retain jurisdiction and restrain proceedings involving a subject which is foreign to Bankruptcy is a question of law, which may be reviewed here if the appeal is allowed.

Wherefore petitioner prays that the appeal may be allowed in the discretion of this Honorable Court in the matter of law herein, and that a citation be issued directed to the Kenmore-Granville Co., a corporation, J. Gold, R. Sandroff

and S. Isenberg, petitioning creditors, George W. Rossetter, Jay C. McCord and Sidney H. Kahn, members of the Bondholders' Protective Committees, commanding them to appear before this court to do and receive whatever may be certain in justice to be done in the premises, and that upon the allowance of the appeal it may be consolidated with this cause, and that the transcript of the record filed in this cause stand as the transcript of record upon the appeal to be allowed by this court, if allowed.

Dated at Chicago, this 6th day of June, A. D., 1935.

NETTIE MEYER,
Petitioner.

By MEYER ABRAMS,
Her Attorneys.

State of Illinois }
County of Cook } ss.

Meyer Abrams being first duly sworn on oath, deposes and says that he is the attorney for the petitioner and for the other objectors who join herein in said Petition prepared by him; that he has read the Petition and knows its contents, and that it is true in substance and in fact.

MEYER ABRAMS.

Subscribed and sworn to before me this 6th day of June, A. D., 1935.

YETTA MAILICK,
Notary Public.

95 And on the same day, to-wit: On the seventh day of June, 1935, the following further proceedings were had and entered of record, to-wit:

Friday, June 7, 1935

Court met pursuant to adjournment and was opened by proclamation before:

Hon. Evan A. Evans, Circuit Judge.

IN THE UNITED STATES CIRCUIT COURT OF APPEALS.
* * (Caption—5531) * *

Now this day come the parties by their counsel and counsel for appellees present a motion that the appeal granted by the District Court in this cause be dismissed.

Counsel for appellants granted 5 days to file a brief in opposition to said petition, and counsel for appellees granted one week thereafter to file a reply thereto.

(1) Thereupon, counsel for appellants, Nettie Meyer, *et al.*, presents a motion that the transcript of the record filed in Cause 5491 be filed in this cause and considered a part of the record.

(2) That the Clerk be directed not to print the matters and things contained in the additional praecipe for record filed by appellee.

(3) That the court may allow an appeal to revise and review the final order entered by the District Court on May 20, 1935, confirming and approving the plan of reorganization, and that such appeal be consolidated with this cause.

Counsel for appellees are granted one week to file brief in opposition to this motion, and the foregoing petition and motion are taken under advisement.

96 And afterwards, to-wit: On the twenty-fifth day of June, 1935, the following further proceedings were had and entered of record, to-wit:

Tuesday, June 25, 1935

Court met pursuant to adjournment and was opened by proclamation. Before:

Hon. Evan A. Evans, Circuit Judge.
Hon. William M. Sparks, Circuit Judge.

IN THE UNITED STATES CIRCUIT COURT OF APPEALS.
* * (Caption—5531) * *

It is ordered by the court that the motion of Nettie Meyer, *et al.*, for the allowance of an appeal from an order entered in this cause by the District Court of the United States for

the Northern District of Illinois, Eastern Division, on May 20, 1935, confirming and approving a plan of reorganization be, and the same is hereby denied.

And afterwards, to-wit: On the twenty-eighth day of June, 1935, there was filed in the office of the Clerk of this court a motion and petition to consolidate Cause 5491 with Cause 5531, etc., which said motion and petition are in the words and figures following, to-wit:

97 IN THE UNITED STATES CIRCUIT COURT OF APPEALS.
* * (Caption—5531) * *

MOTION.

Now come Nettie Meyer, Anna Jacobson, Jacob Meyerhoff, John G. Pankin, Mrs. Rae Mann, Joseph Meyerhoff and Julius Meyerhoff, Appellants, by Meyer Abrams, their attorney, and move as follows:

(1) To consolidate case No. 5491 with this case and to have the record in case No. 5491 stand as part of the record in this cause.

(2) To vacate the order denying the application for leave to appeal and to permit an amendment to the Petition.

(3) To enter all orders in the consolidated cause dismissing the appeals and denying the application for leave to appeal, and to stay the mandate pending application for a Writ of Certiorari, to the Supreme Court of the United States.

In support of the foregoing appellants refer to their Petition and Suggestions.

MEYER ABRAMS,
Attorneys for Appellants.

98 IN THE UNITED STATES CIRCUIT COURT OF APPEALS.
* * (Caption—5531) * *

PETITION.

Your Petitioners, Nettie Meyer, Anna Jacobson, Jacob Meyerhoff, John G. Pankin, Mrs. Rae Mann, Joseph Meyerhoff and Julius Meyerhoff, respectfully show:

(1) That heretofore Nettie Meyer prosecuted her appeal in Case No. 5491, which appeal was dismissed, and that a motion was made in that cause to vacate the dismissal order, and a motion is presented to the court together with a motion in this cause to vacate the dismissal order and to consolidate the two causes.

(2) That this court has rendered a memorandum of an opinion in this cause stating therein that the appeal allowed below was without jurisdiction, but that no final order was entered, and in view of the opinion, the entry thereof is merely ministerial, and that appellants expect that such order will be entered, and they are desirous of having all orders entered simultaneously in the consolidated cause so that the whole subject matter may be presented for review to the Supreme Court of the United States, and it would save a great deal of expense and simplify the procedure if the motions will be allowed.

99 (3) That this court denied the application of Nettie Meyer for leave to appeal and that it indicated in its opinion that the reason for the denial is due to the fact that the co-appellants, Anna Jacobson, Jacob Meyerhoff, John G. Pankin, Mrs. Rae Mann, Joseph Meyerhoff and Julius Meyerhoff have not joined in the appeal, but that all petitioners did authorize said Nettie Meyer to appeal in her name and in the name of all other petitioners represented by the same attorney, and for the purpose of curing any technical defect in the Petition, they desire to have the records show that they joined and are now joining in the application for leave to appeal and pray that the Petition be treated as an amendment to the Petition heretofore filed by said Nettie Meyer,

(4) That if this court is convinced that leave to appeal should be denied, the order denying the appeal should also be entered simultaneously with the orders dismissing the appeals, so that this matter may also be included in the application for the Writ of Certiorari.

(5) That petitioners have filed their written objections to the Plan of Reorganization and are joining in the application for leave to appear heretofore filed by the said Nettie Meyer.

Wherefore, Petitioners pray that the court may consider the foregoing motion together with the consideration of the

motion in case No. 5491, and that it may pass upon the whole matter at once so that the case should not go up in piecemeal to the Supreme Court of the United States, and thereby avoid great confusion and unnecessary expenditures.

NETTIE MEYER,
ANNA JACOBSON,
JACOB MEYERHOFF,
JOHN G. PANKIN,
MRS. RAE MANN,
JOSEPH MEYERHOFF,
JULIUS MEYERHOFF,

By MEYER ABRAMS,
Their Attorney.

State of Illinois }
County of Cook } ss:

100 Meyer Abrams being first duly sworn on his oath, deposes and says that he is the duly authorized agent and attorney for all of the foregoing petitioners; that he has read the foregoing petition prepared by him, knows the contents thereof, and that it is true in substance and in fact.

MEYER ABRAMS.

Subscribed and sworn to before me this 27th day of June, A. D., 1935.

ROSE RITTENBERG,
Notary Public.

(Notarial Seal)

101 And afterwards, to-wit: On the first day of July, 1935, there was filed in the office of the Clerk of this court a petition of appellees to dismiss the appeal, which said petition is in the words and figures following, to-wit:

102 IN THE UNITED STATES CIRCUIT COURT OF APPEALS.
* * (Caption—5531) * *

PETITION.

Now come Kenmore-Granville Hotel Company, a corporation, Debtor, J. Gold, R. Sandroff and S. Isenberg, petitioning

creditors and George W. Rossetter, Jay C. McCord and Sidney H. Kahn as The Sovereign and The Sovereign Annex First Mortgage Bondholders' Committee, appellees herein, by their respective counsel, and represent unto the court as follows:

1. That on May 20, 1935 an order was entered in the above entitled matter in the District Court confirming a plan of reorganization therein; that on said date Nettie Meyer prayed an appeal in said court from said order which appeal was allowed.

2. That on or about June 7, 1935 petitioners made their motion in this court to dismiss the said appeal; that on
103 said motion the court allowed the appellant five days in which to file a brief in reply to the petition of the appellees to dismiss the appeal and allowed appellees one week to file a reply to appellant's brief.

3. That on or about June 7, 1935 Nettie Meyer presented her petition in this court praying an appeal from said order of May 20, 1935; that at said time appellees were allowed one week to file counter suggestions to said petition.

4. Such briefs and counter suggestions were filed by appellant and appellees respectfully.

5. That on or about June 26, 1935 this court rendered a memorandum opinion which contained substantially the following:

> "The petition for leave to appeal is denied, and the motion to dismiss the appeal allowed by the District Court will be entertained as being one from which the District Court may not allow an appeal."

6. The motion heretofore made to dismiss the appeal allowed in the District Court is undisposed of and is still before the court. In view of the language of the court in said opinion that "the motion to dismiss the appeal allowed by the District Court will be entertained * * *" petitioners desire, at this time, to call up the motion now pending to dismiss the appeal allowed by the District Court, for such disposition as the court sees fit to make.

Wherefore, your petitioners, as the appellees herein, pray that the said motion to dismiss the appeal allowed in
104 the District Court from said order of May 20, 1935 be disposed of, and that said appeal be dismissed; and they

further pray that the said appeal be dismissed on the authority of the opinion rendered by this court on the petition filed herein for leave to appeal from said order.

IRVING H. FLAMM,
MAX FREDERICK GOLDBERG,
EDWARD SONNENSCHEIN,
BERNARD NATH,
I. E. FERGUSON,
ARTHUR M. COX,
CLAUDE A. ROTH,
HARRY E. SMOOT,

By HARRY E. SMOOT,
Counsel for petitioners and appellees.

105 And afterwards, to-wit: On the ninth day of July, 1935, the following further proceedings were had and entered of record, to-wit:

Tuesday, July 9, 1935

Court met pursuant to adjournment and was opened by proclamation. Before:

Hon. Evan A. Evans, Circuit Judge
Hon. William H. Sparks, Circuit Judge

IN THE UNITED STATES CIRCUIT COURT OF APPEALS.
* * (Caption—5531) * *

It is ordered by the court that the appeal granted to Nettie Meyer, *et al.*, by the District Court of the United States for the Northern District of Illinois, Eastern Division, in this cause from an order entered by said District Court on May 20, 1935, approving a plan of reorganization, be, and the same is hereby dismissed with costs.

106 And afterwards, to-wit: On the twelfth day of July, 1935, there was filed in the office of the Clerk of this court a praecipe for record, which said praecipe is in the words and figures following, to-wit:

107 IN THE UNITED STATES CIRCUIT COURT OF APPEALS.
* * (Caption—5531) * *

PRAECIPE FOR RECORD.

To the Clerk of the United States Circuit Court of Appeals, for the Seventh Circuit:

You are hereby requested and directed to prepare the record for the Supreme Court of the United States, said record to consist of the following:

(1) Placita.

(2) Pages 59 to 64 Supplemental Report of Master contained in transcript.

(3) Pages 65 to 68 Objections contained in transcript.

(4) Pages 69 to 79 Amended Plan contained in transcript.

(5) Pages 73 to 92 Order of May 20, 1935, contained in transcript.

(6) Pages 93 to 96 Statement of Evidence, contained in transcript.

(7) Page 105 Petition for appeal contained in transcript.

(8) Page 106 Assignment of Errors, contained in transcript.

(9) Page 110 Order allowing appeal contained in transcript.

(10) Page 112 Praecipe for Record contained in transcript.

(11) Page 114 Additional Praecipe contained in transcript.

(12) Motion and Petition for leave to appeal.

(13) All orders.

(14) All Petitions and Motions (excluding suggestions and authorities).

You are requested to certify same to the Supreme Court of the United States.

MEYER ABRAMS,
Attorney for Nettie Meyer, et al., Appellants.

109 And afterwards, to-wit: On the seventeenth day of July, 1935, there was filed in the office of the Clerk of this court an additional praecipe for record, which said additional praecipe is in the words and figures following, to-wit:

IN THE UNITED STATES CIRCUIT COURT OF APPEALS.
* * (Caption—5531) * *

PRAECIPE FOR ADDITIONAL MATTERS FOR RECORD.

To the Clerk of the United States Circuit Court of Appeals for the Seventh Circuit:

You are hereby requested and directed to prepare a Praecipe for Additional Matters for Record in connection with the Praecipe of Record for the Supreme Court of the United States, heretofore filed with you, and to include therein the following:

(1) pages 22 to 50, inclusive
Joint intervening petition of George W. Rossetter, Jay C. McCord and Sidney H. Kahn, as the Sovereign Annex First Mortgage Bondholders' Committee and the Sovereign First Mortgage Bondholders' Committee, representing certain holders of the first mortgage bonds of said issues, filed pursuant to order of court entered on February 13, 1935, including Exhibits "C" and Amendment to Plan of Reorganization thereto attached, contained in transcript;

(2) pages 51 to 58, inclusive
Order of February 27, 1935, granting leave to said intervening petitioners to file their petition proposing a plan of reorganization instanter, contained in transcript;

(3) pages 97 to 102, inclusive, remaining portions of statement of evidence including memorandum signed by District Court Judge Barnes; contained in transcript.

MAX FREDERICK GOLDBERG,
Attorney for Kenmore-Granville Hotel Company, a corporation, Debtor.

UNITED STATES CIRCUIT COURT OF APPEALS
FOR THE SEVENTH CIRCUIT.

I, FREDERICK G. CAMPBELL, Clerk of the United States Circuit Court of Appeals for the Seventh Circuit, do hereby certify that the foregoing printed pages numbered from 1 to 102 inclusive, contain a true copy of the Printed Record of proceedings in the District Court, printed under my supervision and filed on May 2, 1935, as called for by Item 1 of the Praecipe filed on July 12, 1935; and that the foregoing printed pages numbered from 103 to 106 contain a true copy of the proceedings had and papers filed in this Court, as called for by Items 2 to 4 inclusive of said Praecipe filed on July 12, 1935,

In the Matter of

KENMORE-GRANVILLE HOTEL COMPANY,
Debtor;

NETTIE MEYER,
Appellant,

5491 *vs.*

KENMORE-GRANVILLE HOTEL COMPANY, *et al.*,
Appellees,

and I further certify that the foregoing printed pages from page 107 to and including the first one-half of 170 contain a true copy of the parts of the transcript of the record of proceedings of the District Court of the United States for the Northern District of Illinois, Eastern Division filed in this Court on June 6, 1935, as called for by the appellants' Praecipe filed on July 12, 1935 and the appellees' Praecipe filed on July 17, 1935; and that the foregoing printed pages

from the last one-half of page 170 to 184 inclusive, contain a true copy of the proceedings had and papers filed in this Court, as called for by the appellants' Praecipe filed on July 12, 1935,

In the Matter of

KENMORE-GRANVILLE HOTEL COMPANY,
Debtor;

NETTIE MEYER, in her own behalf and on behalf of other objectors represented by Shulman, Shulman & Abrams,
Appellants,

5531 *vs.*

KENMORE-GRANVILLE HOTEL COMPANY, *et al.*,
Appellees,

as the same remains upon the files and records of the United States Circuit Court of Appeals for the Seventh Circuit.

IN TESTIMONY WHEREOF I hereunto subscribe my name and affix the seal of said United States Circuit Court of Appeals for the Seventh Circuit, at the City of Chicago, this 13th day of August A. D. 1935.

FREDERICK G. CAMPBELL,
Clerk of the United States Circuit Court of Appeals for the Seventh Circuit.

(Seal)

By K. J. CARRICK,
Chief Deputy Clerk.

[fol. 187] SUPREME COURT OF THE UNITED STATES, OCTOBER TERM, 1935

No. 375

ORDER ALLOWING CERTIORARI—Filed October 14, 1935

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Seventh Circuit is granted, and the case is assigned for argument immediately following No. 157.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

[fol. 188] SUPREME COURT OF THE UNITED STATES, OCTOBER TERM, 1935

No. 376

ORDER ALLOWING CERTIORARI—Filed October 14, 1935

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Seventh Circuit is granted, and the case is assigned for argument immediately following Nos. 157 and 375.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

FILE COPY

IN THE

Supreme Court of the United States

October Term, A. D. 1935.

No.

NETTIE MEYER, ANNA JACOBSON, JACOB MEYERHOFF, JOSEPH MEYERHOFF, JULIUS MEYERHOFF, JOHN C. PANKIN and RAY MANN,

vs.

KENMORE GRANVILLE HOTEL COMPANY, *et al.*

Petition for a Writ of Certiorari.

MEYER ABRAMS,
MAX SHULMAN,
134 N. LaSalle St.,
Chicago, Illinois,
Attorneys for Petitioners.

HOMER LANDAU & CO., CHICAGO, ILLINOIS

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IN THE

SUPREME COURT OF THE UNITED STATES

October Term, A. D. 1935.

NETTIE MEYER, ANNA JACOBSON, JACOB MEYERHOFF, JOSEPH MEYERHOFF, JULIUS MEYERHOFF, JOHN C. PANKIN and RAY MANN,

vs.

KENMORE GRANVILLE HOTEL COMPANY, *et al.*

PETITION FOR A WRIT OF CERTIORARI.

To the Honorable, the Chief Justice and Associate Justices of the Supreme Court of the United States:

Petitioners, Nettie Meyer, Anna Jacobson, Jacob Meyerhoff, Joseph Meyerhoff, Julius Meyerhoff, John C. Pankin and Ray Mann, pray the issuance of a writ of certiorari to review the decisions of the United States Circuit Court of Appeals for the Seventh Circuit in dismissing the first appeal on May 28, 1935, the second appeal on July 9, 1935, and at the same time denying the prayer of the petition for leave to appeal, in connection with certain proceedings under Section 77B of the Amendment to the Bankruptcy Act.

A STATEMENT OF THE CASE.

S. W. Straus & Co. floated two bond issues on the Sovereign Hotel. The first bond issue was made in 1919, for $1,000,000 on the "Hotel." The second bond issue was made in 1922 on the "Annex" in the amount of $1,000,000.

The Hotel and the Annex were operated as one unit (Tr. 20) but had separate bond issues. Samuel J. T. Straus was trustee of the "Annex," having succeeded Melvin L. Straus, who resigned (Tr. 46). Melvin L. Straus was trustee of the "Hotel," having succeeded Arthur W. Straus (Tr. 45). The two trustees (officers and directors of S. W. Straus & Co.) were in possession since 1925, because of existing defaults, and managed the property as one unit. A junior bond issue of $250,000 was also floated by the House in 1922 on both the Hotel and the Annex which was foreclosed, and a Master's deed was issued to the purchaser at the sale, Sidney H. Kahn, another officer of S. W. Straus & Co. (Tr. 44). He organized the "Debtor" corporation and conveyed the title to it in October, 1932. The new corporation did not assume the debts and was never in possession. It never functioned.

Three bondholders of the bonds made by the old corporation filed a petition under Section 77B (Tr. 2) against the new corporation claiming that they were "creditors," and the new corporation was a "debtor," and asked for corporate reorganization, but no approval of the petition was sought prior to the hearing on the motion for a receiver in the State Court and the cause was not yet at issue.

Petitioner, Nettie Meyer, a bondholder, filed her complaint (Tr. 38) in the State Court, prior to the approval of the petition, setting forth therein a cause of fraud, gross negligence and conspiracy to deprive the bondholders of their securities by means of a reorganization scheme adopted by the persons who betrayed the interest of the bondholders in the past ten years. Her counsel served notice that he would appear on February 13, 1935, before the Chancellor, and ask to restrain the committee from proceeding with its plan, and for the appointment of a receiver

(Tr. 63). In order to avoid trial there, the "Debtor" voluntarily filed its answer and consent in the District Court on the same day, had the petition approved, and procured a restraining order against the State Court proceedings. When the motion was called in the State Court they urged the Federal restraining order (Tr. 63). Counsel for petitioner appeared and moved to dissolve the injunction and to dismiss the proceedings supported by a verified petition (Tr. 37), but the District Court denied the motion and the first appeal was prosecuted.

The petition, in support of the motion, alleged that prior to the approval of the petition under Section 77B petitioner had filed her complaint in the State Court setting forth therein the floating of the two bond issues by the Straus organization in 1919 and 1922, and that both bond issues were in default since 1925, and the trustees of each bond issue were in possession of the Hotel and Annex, the bondholders were not informed thereof, but on the contrary, when their coupons matured the House paid them. The House instituted a junior foreclosure. The income was applied by the trustees to reimburse the company wherein the two trustees were actively engaged as its officers and directors. The property was acquired in this foreclosure in the name of Sidney H. Kahn, another vice-president of the company, but in reality, S. W. Straus & Co. was the owner. After the company thus became the owner it defaulted in the payment of the taxes, and its two vice-presidents, the trustees, accelerated both bond issues because of the defaults, and instituted foreclosure proceedings, and obtained decrees. S. W. Straus & Co. organized a committee consisting of its officers to serve as a "protective committee," and the bondholders were urged to deposit their bonds with the Straus Bank as depositary. By the terms of the agreement the committee was vested with the legal

and equitable title to the deposited bonds, so that the company which was the secret owner of the property, became the owner of the bonds via its committee. In order to coerce the bondholders to become depositors they informed them that the property will be sold at the foreclosure sale to the committee at the lowest bid and the non-depositors will receive the proceeds of this bid minus all expenses. The committee announced its plan of reorganization which proposed to exchange the bonds for common stock in the corporation, ten per cent of which would be given to S. W. Straus & Co. for its junior interest, and the ninety per cent to be distributed to the depositors. The stockholders would have no voice or vote, but the persons named by the committee would be the trustees and would manage and operate the property, and the cash on hand was to be paid to the committee, to the depositary, to the trustees, and for costs of reorganization. The complaint asked to prevent this fraud and sought the return of the bonds to the bondholders, to hold the defendants liable for their fraudulent acts and gross negligence, and prayed for an injunction, accounting and a receiver.

The petition further alleged that prior to the approval of the petition under Section 77B, appellant served notice for an application to the Chancellor on February 13, 1935, for the appointment of a receiver and for a temporary injunction, but in order to escape trial and to deprive the State Court of its jurisdiction, the alleged debtor appeared that morning in the District Court and filed its answer and consent and procured the approval of the petition, and the restraining order. When they presented the restraining order the Chancellor stated (Tr. 64) that the parties did not act fairly with the Court, and continued the hearing and instructed appellants' counsel to present the facts to the District Court.

The petition alleged that the Kenmore-Granville Hotel Corporation was not a "Debtor"; that the petitioners were not "creditors" because the interest of the corporations which executed the bonds was completely foreclosed, and there was no debtor nor property belonging to the debtor. It also urged that the subject matter in the State Court involving fraud and breach of trust was not dischargeable in bankruptcy and could not be restrained. It alleged that the creditors' petition was not filed in good faith and that the answer of the alleged "debtor" did not confer jurisdiction. It prayed that the injunction be dissolved and the proceedings dismissed for fraud and want of jurisdiction. The District Court denied the prayer of the petition by its order of March 20, 1935 (Tr. 93). An appeal was allowed (Tr. 96) and the appeal was prosecuted and the transcript and brief were filed. This appeal did not operate as a supersedeas, and on May 20, 1935, the District Court approved the reorganization plan with some modifications (Tr. 122-135). Petitioners were allowed an appeal by the District Court from the last order (Tr. 145). Petitioner also filed a petition in the Circuit Court of Appeals for leave to appeal from the final order or to treat the last appeal taken below as a petition for leave to appeal and to consolidate all appeals (Tr. 149-153). The Circuit Court of Appeals dismissed the first appeal on May 28, 1935 (Tr. 105). It dismissed the second appeal on July 9, 1935 and at the same time denied all motions (Tr. 159).

Questions presented.

1. Whether an appeal lies as a matter of right from the approval of a petition for reorganization under Section 77B.

2. Whether an appeal lies from the confirmation of a reorganization plan under Section 77B to review questions of facts.
3. Whether the appeal from a final order is discretionary only with the reviewing court involving only questions of law.
4. Whether a reviewing court may dismiss an appeal on the ground that leave must be obtained to appeal under 77B and at the same time deny such leave so that no mode of review remains open to an aggrieved party.
5. Was it the intent of Congress to make the District Court supreme in passing upon reorganization plans and there is no review on the facts.
6. Is Section 77B constitutional, or are some of its features repugnant to the laws of the land?
7. May a creditor of a corporation whose interest was completely wiped out by a foreclosure which ripened into a deed maintain an action for corporate reorganization against a corporation which did not assume the debt.
8. May a protective committee initiate proceedings in a state court to carry out a fraudulent reorganization, and when sought to be restrained there, obtain the aid of the Federal courts to accomplish its fraudulent scheme and escape liability.
9. May trustees betray the interests of the beneficiaries and grossly mismanage the trust property and escape liability by a proceeding under 77B.
10. Does 77B confer jurisdiction in matters of fraud and breach of trusts which were expressly excluded from bankruptcy prior to the enactment of this section.

11. Whether or not 77B should be used as a shield for fraud.
12. Does the District Court possess the power to approve a plan which exchanges the bonds of the bondholders for stock?
13. May a court take away capital from the first mortgage bondholders and give it to the mortgagor and the other junior interests?

Reasons for the allowance of the writ.

1. The constitutionality of Section 77B was not yet passed upon by this Court, and the question should be settled.
2. The decision of the reviewing court that no right exists to appeal from a final order of confirmation of a reorganization plan is in direct conflict with other decisions which hold that an appeal lies from an order of confirmation.
3. The matters in this case involve important Federal questions dealing with the most recent legislation, and deserve the consideration of this Court.
4. The question of procedure on appeal under 77B is of great importance and should be clarified and settled.
5. If it be true that no appeal lies from a final order of confirmation, then there is no mode of review of the fairness of any plan as the reviewing court, under a petition for leave to appeal, could only consider matters of law.
6. The action of the District Court in approving a plan of reorganization, which took away the bonds from the bondholders and gave them stock and allowed ten per cent thereof to the junior interests and the dismissal of the several appeals on mere motions, deprived petitioners of their rights without due process of law.

WHEREFORE, your petitioners pray the allowance of a writ of certiorari to the United States Circuit Court of Appeals for the Seventh Circuit, that the case herein may be reviewed and decided by this Court, and the judgment and orders herein reversed, and for such other relief as this Court may deem meet.

MEYER ABRAMS,
MAX SHULMAN,
Attorneys for Petitioners.

BRIEF IN SUPPORT OF PETITION.

The jurisdiction of this Court to grant the writ.

The jurisdiction here is invoked under 240 (a) of the Judicial Code as amended by the act of February 13, 1925 (43 Stat. 938, 28 U. S. C. A. Sec. 347). The Circuit Court of Appeals for the Seventh Circuit entered its order on May 28, 1935, dismissing an appeal from an order approving a petition for corporate reorganization under Section 77B as filed in good faith and restraining the proceedings in the State Court involving matters of fraud and a breach of trust. It also entered an order on July 9, 1935, dismissing another appeal in the same case from the final order of confirmation of the plan of reorganization on the ground that the order was not appealable below. At the same time, it denied an application for leave to appeal.

It is sought by the petition to obtain a review of the whole case and to settle the practice in connection with appeals under 77B as well as the constitutionality of the whole act.

ARGUMENT.

Preliminary statement.

The petition for corporate reorganization involved two bond issues for $1,000,000 each, one issue was placed in 1919 on the Sovereign "Hotel," and the other, in 1922, on the "Annex." Foreclosure decrees were entered in each case in the State Court. The Hotel decree was entered February 19, 1932, and the Annex decree was entered January 13, 1932. Under the "Hotel" decree a sale could be made at any time, and *the purchaser at the sale will acquire complete title with no equity of redemption.* On the "Annex" decree there will still remain the period of redemption of 15 months after the sale. A proposed plan of reorganization was submitted by an alleged protective committee. The plan was assailed in the State Court for fraud. The committee transferred the plan to the District Court. Nettie Meyer, one of the petitioners, prosecuted an appeal from the approval of the petition and from the denial of her motion to dissolve the injunction which restrained her from proceeding with the State Court proceedings. The appeal was prosecuted in case No. 5491. The transcript and brief were filed, but the Court dismissed the appeal on the ground that appellant had no right to appeal below.

During the pendency of the appeal the Court passed upon the plan. Nettie Meyer and other bondholders (petitioners), in the aggregate amount of $9,000, prosecuted an appeal below from the order approving the plan of reorganization as modified, and also made application for leave to

appeal and to revise, as a matter of law, the final order of the Court, because of the doubt whether the appeal was properly taken below.

All appeals were dismissed and the motion for leave to appeal was also denied.

I.

This is not a controversy between a minority and a majority, but between all the bondholders, and a few persons who claim to represent the large majority, by concealment of material facts and duress.

While it is our contention that the interest of the smallest minority should be safeguarded and protected to the same extent as the large majority yet, *this is not a controversy between the majority and minority bondholders,* but a controversy *between the bondholders,* the real parties in interest, *and a few persons who* have imposed themselves *upon the bondholders* as an alleged protective committee and who have acquired the bonds by concealment of material facts, coercion and misrepresentation. *If the bondholders were acquainted with the facts, the large majority would be on the side of the petitioners.*

The persons who originally constituted the committee, were the officers and directors of S. W. Straus & Co., the issuing house. Two of its present members, Samuel J. T. Straus and Sidney H. Kahn, were the senior executive officers and directors of S. W. Straus & Co., and in the sale of the bonds to the public *they represented that throughout the life of the bond issues, they would safeguard the interest of the bond owners* by collecting monthly the deposits required, in order to promptly meet the payment of interest,

principal and taxes. The bondholders relied on the representations and believed in the good faith of the officers of S. W. Straus & Co. (Tr. 40, 43, 44).

The record shows (Tr. 43) that *both bond issues were in default in the year 1925.* Melvin L. Straus and Samuel J. T. Straus, *the two trustees* under the bond issues *were in possession since 1925.* During the time they were in possession, they permitted the "House" to pay interest to the bondholders and *to reimburse itself out of the income collected, as trustee in possession, without paying the taxes due thereon.* Thereby the bondholders were deceived and took no action to protect their interest.

The two trustees, who were derelict in their duties, procured foreclosure decrees in proceedings (Tr. 44) to which the bondholders were not parties, where they received fees in excess of $50,000. There still remains due on the "Annex" $848,931.51, and on the "Hotel" $618,206.20. S. W. Straus & Co., (the House) acquired the junior lien in said proceeding to the extent of $173,574.34 on the Annex and $202,308.22 on the Hotel. *The two trustees and the members of the committee who were officers and directors of S. W. Straus & Co., therefore, had conflicting interests representing the superior interest* of the bondholders *and the inferior interest* of their "House." (*Meyers* v. *American National Bank,* 277 Ill. App. 378, involving a "Straus" issue; *White* v. *Macqueen,* 360 Ill. 236 advanced sheets.)

The House, its officers and directors and trustees, and the members of the committee, who were its *active* officers, made themselves liable to the bondholders for their gross negligence and misconduct *in paying to the House from the income of the property from the years 1925 up to 1932,* contrary to the provisions of the trust indentures, which required the trustees *to first pay and discharge the tax liens.*

It was also their duty to reveal the information to the bondholders in 1925 when the defaults occurred and *before the collapse in the real estate market.* (*Meyer* v. *American National Bank, supra.*)

These persons who have *appointed from their own midst* an alleged protective committee, lead the bondholders into the belief that the committee was organized for their welfare. They solicited them to deposit the bonds with their depositary (the Straus Bank), without informing them of the real facts.

In order to *coerce* the bondholders to deposit their bonds, they informed them (Tr. 48) that they intended to make foreclosure sales in the two proceedings, and in view of the present real estate market, there would be no other purchasers and the committee would be the successful bidders at the *lowest* price, and *the non-depositors would receive the proceeds of the nominal bid,* less all foreclosure expenses. *The bondholders, who were widely scattered, were thereby coerced to deposit their bonds and to accept the terms imposed upon them by the committee.* By the terms of the depositary agreement the committee became the legal holder and owner of the bonds and *could exchange the superior interest for the inferior interest* or commingle the two interests.

Petitioner, Nettie Meyer, (a depositor), assailed these plans in the State Court, for her own protection and for the protection of all other bondholders (Tr. 37-65). The other petitioners likewise sought relief for themselves as depositors who were *induced to deposit their bonds by the concealment of the facts,* and sought the relief for the benefit of *all* bondholders. The committee which claims to represent all bondholders, also claims to be the representative

of the petitioners. If petitioners succeeded in the reversal of the order, all bondholders would have benefited therefrom.

We emphasize the fact that *this is not a controversy between the few and the many,* but a controversy *between the real parties in interest as against the persons who have not invested a dime in the property,* but who have enriched themselves in the past from the investment of the bond purchasers, and *who betrayed the confidence reposed in them* and are now manipulating to control the property in the future to the detriment of the persons who have invested their hard earned money in the project.

In *First National Bank of Cincinnati* v. *Flersheim,* (290 U. S. 504) 95% of the bondholders have put over a reorganization, which was approved by the District Court, as well as by the Circuit Court of Appeals. This Court reversed it and held that *it was not the duty of the Court to aid the fraudulent plans of the committees even if 95% consented to the plan.* In *Guaranty Trust Safe Deposit* (139 U. S. 143) it was held that the rights of a few bonds will be protected against the millions of bonds held by the committee. In *Cushman* v. *Bonfield* (139 Ill. 219, 243) the Supreme Court of Illinois said that the interest of *one* bondholder is as sacred to the Court as the interest of the others, and it was the duty of the Court to protect such interest. If the Court had jurisdiction of the subject matter and if the plan was fair and reasonable it is the duty of the Court to affirm it. If the Court is without jurisdiction, or if the plan was unfair and inequitable, *it is its duty to set it aside no matter how large the majority is which favors it.* (*1st Nat.* v. *Flersheim, supra*). A court of bankruptcy acts as a *court of equity.* It is guided by equitable principles, and should not lend its aid to accomplish fraudulent reorganiza-

tions. *Parties who are interested as creditors are certainly entitled to their day in court by some method of review,* and the technicalities of the law should not be used to defeat justice. We were either entitled to a review as a matter of right, or to a review by the exercise of the discretionary powers of the Court, from the final order of the confirmation of the plan. *It was certainly beyond the imagination of Congress that a District Court could approve a plan of reorganization no matter how unjust it may be, and there be no right to review.*

II.

An appeal from an order confirming a plan of reorganization is an appeal from a final order and exists as a matter of right.

The distinction between an appeal as a matter of right and an appeal as discretionary, is that on the former the Court may review both the law and the facts, while in the latter, the reviewing Court *may only review the law.* A District Court may approve a most unfair plan, yet no review can be had on the facts if such appeal does not exist as a matter of right. It was certainly not contemplated that there be no review on the facts from the decision of the District Court.

An order confirming a plan of reorganization is not any different from an order confirming a plan of confirmation. The results in both cases constitute a discharge in bankruptcy. The reasoning of the Court in holding that an order confirming a composition is appealable (*United States ex rel. Adler* v. *Hammond,* 104 Fed. 862, 863; C. C. A. 6; *Hamilton-Brown Shoe Co.* v. *Berwald,* 10 Fed. (2d) 275, 276,

C. C. A. 5), well applies to an appeal from the order in the instant case.

The dismissal of the appeal from the order of confirmation was palpably erroneous.

III.

Petitioner Nettie Meyer claimed adversely to the alleged "debtor" and asserted that the District Court was without jurisdiction. She moved to dissolve the restraining order, which interfered with the possession of the res. Such an appeal is appealable as a matter of right.

In the instant case petitioner contends that *there is no debtor and no creditor and no property belonging to the debtor.* The proceedings in the State Court were to take possession of the *res adversely to the debtor.* In *McGonigle* v. *Foutch,* (51 Fed. (2) 455), the Court said (p. 459):

> "Section 129 of the Judicial Code (28) USCA No. 227) provides that 'where, upon a hearing in a district court, or by a judge thereof, * * * an injunction is granted, continued, modified, refused, or dissolved by an interlocutory order or decree, or an application to dissolve or modify an injunction is refused, * * * an appeal may be taken from such interlocutory order or decree.' The Court of Appeals for the Sixth Circuit (*O'Dell* v. *Boyden,* 150 F. 731, 10 Ann. Cas. 239), holds that *such interlocutory order by a court of bankruptcy, which is not one in a mere proceeding in bankruptcy, is reviewable by appeal,* where the final decree therein would be, notwithstanding the jurisdiction of the District Court to grant such injunction is involved. *Bothwell* v. *Fitzgerald* (C. C. A. 9) 219 F. 408, holds such orders to be controversies arising in bankruptcy proceedings, and, as such, appealable."

It further says:

> "Conceding that a restraining order granted without a hearing is not ordinarily appealable, *yet a restraining order which is granted, or sustained, or denied after a hearing of the parties, and which in effect and in everything but name, is a temporary injunction, falls within the evident meaning of the statute, and is reviewable by appeal, and the orders in question were of that character.*" *Western Union Telegraph Co.* v. *United States & M. T. Co.* (C. C. A. 8) 221 F. 545, 553; *Field* v. *Kansas City Refining Co.* (C. C. A. 8) 296 F. 800."

In *Molina* v. *Murphy*, 71 Fed. (2) 605, (C. C. A. 1) a similar question was presented in connection with Section 74. The Bankruptcy Court restrained a foreclosure proceeding in the State Court, and the appeal was taken from the order. On motion to dismiss the appeal the Circuit Court of Appeals said:

> "We do not doubt that the order was appealable. 28 USCA No. 227; *McGonigle* v. *Foutch*, 51 Fed. (2) 455."

In *Lamb* v. *Townsend*, 71 Fed. (2) 590 (C. C. A. 4), the jurisdiction of the Bankruptcy Court to interfere with the *res* possessed by the State Court was challenged, and the Court held that the appeal was proper because it constituted a controversy and not a proceeding in bankruptcy.

A similar question was so decided in *Irving Trust Co.* v. *Fleming*, 73 Fed. (2) 423 (C. C. A. 4). A petition of a creditor to reclaim property was held appealable on the same theory in *B. & B. Glove Corp.*, 279 Fed. 372, 375 (C. C. A. 2).

IV.

The questions presented by the appeals were not mere steps in the administration but distinct and separate issues concerning the right of the alleged debtor to the property, and the jurisdiction of the Court to act.

The conclusion that the District Court was without jurisdiction to grant either appeal is largely due to their failure to realize the distinction between (a) controversies arising in bankruptcy proceedings, which is a matter of right, and (b) proceedings in bankruptcy, which is discretionary. The distinction was well pointed out in *Clark* v. *Huckaby, et al.*, 28 F. (2d) 154, 156, and in *Taylor* v. *Wass*, 271 U. S. 176, the Court said

> "It is now settled by the decisions of this court, that the 'controversies arising in bankruptcy proceeding' referred to in Sec. 24A include those matters arising in the court of a bankruptcy proceeding, which are not mere steps in the ordinary administration of the bankrupt estate, but present, by intervention or otherwise, distinct and separable issues between the trustee and adverse claimants concerning the right and title to the bankrupt estate. * * * In such controversies the decrees of the court of bankruptcy may be reviewed by appeals which bring up the whole matter and open both the facts and the law for consideration."

The petition asserted that the State Court directed the appellant to appear in the District Court and *contest its jurisdiction over the res.* The denial of the motion was appealable, *Bryn* v. *Speakman*, 53 Fed. (2) 463.

V.

The appeals having been taken in time and presenting questions of law, under such conditions the Court should have treated it as a petition for leave to appeal.

Even if it be considered that the proper mode was by leave to appeal the Court should have treated it as such under the settled law. *Grotin* v. *Faith*, 253 Fed. 32, 33; *Duryea Power Co.* v. *Stennbergh*, 218 U. S. 299, 301.

VI.

Section 77B was not enacted to aid the accomplishment of a fraud nor was its purpose to reorganize corporations which never in fact existed.

Courts of bankruptcy are courts of equity, and will not exercise their power to aid a fraud (*Cornwall Press* v. *Ray Long*, 75 Fed. (2d) 276, 277). The District Judge has the duty to "minister in the temple of justice" so that his authority be not invoked for the accomplishment of a fraud. It was equally the duty of the reviewing court to protect itself. The conveyance to the alleged debtor was made in order to put over the fraudulent reorganization prior to the enactment of 77B. This dummy corporation never functioned. It was never in business. It was a mere device to accomplish a fraud. It was a scheme whereby this "myth" was used "to supply a protective cover for a fraudulent design." (*Sherman* v. *Collins*, 75 Fed. (2d) 26.) The whole proceeding was a form to shield the house and its officers from fraud and gross negligence and to reward them and give them the control of the property under a "form of

conveyance *masquerading as a corporate reorganization"* (*Gregory* v. *Holvering,* 55 Sup. Ct. Rep. 266). Such devices cannot succeed to confer jurisdiction (*Soulter Realty Co.* v. *Walker,* 211 U. S. 603; *Miller* v. *East Side Canal,* 211 U. S. 293, 297). It was not the object of Congress to provide corporate reorganization for corporations which *never in fact existed.*

(a) There was no debtor and no creditor and the District Court was wholly without jurisdiction of the corporate reorganization.

Under Section 77B there must be a creditor and a debtor in order to invoke the jurisdiction. (*Bryan* v. *Welch,* 74 Fed. (2) 964, 971; *Brun* v. *Wiesher,* 75 (2) 25, 27; *Draco Realty Corp.* (Bankruptcy Law Service) p. 1148). Here, there was no creditor or debtor. The two corporations which were indebted on the bond issues were foreclosed in the junior foreclosure when Sidney H. Kahn acquired the Master's deed. The new corporation did not assume the debt. It was a mere paper organization for the reorganization purposes. It in fact never existed. The trustees were in possession since 1925, and thereafter the county treasurer was in possession, so that there was neither a debtor nor a creditor within the Act and jurisdiction was actually lacking.

The exact situation was presented to the District Court of New York (*Draco Realty Corporation, Bankruptcy Law Service,* page 1148 decided October 11, 1934). There the Court said

> "From the facts pleaded, it is evident that the petitioners are not creditors of the Draco Corporation. They are creditors of the Winfred Corporation, whose bonds they hold, and they also have a lien on prop-

erty now owned by the Draco Corporation. *But they are not creditors of the latter company.*"

The Court dismissed the petition for want of jurisdiction.

(b) The Kenmore Granville Hotel Corporation was organized for reorganization purposes, and cannot be used as an instrumentality to confer jurisdiction.

Sidney H. Kahn organized the corporation under the reorganization scheme of the committee. It was a mere paper organization which did not exist, and was created in order to accomplish the fraudulent reorganization. Such a corporation is not a proper party for corporate reorganization under Section 77B.

Section 77B of the Bankruptcy Act was designed by its very title as well as the language which its contains to be for the relief of *debtor corporations.* It looked to a situation where a debtor corporation in the pursuit of some legitimate corporate enterprise had met with misfortune and thereby accumulated obligations which it could not pay in the regular course of its business; and sought to provide a method for adjusting the relations of the corporation to its creditors and stockholders in a way which would be equitable to all concerned. It never could have been contemplated that a person or group of persons finding a situation in existence relating to one or more properties, reorganization whereof might be badly needed, could organize a corporation for the *sole* purpose of placing the title to such properties in a corporation and have *it seek relief* under the act in question. Nothing could have been further from the intention of the lawmaking body.

There are various other State and Federal Acts in force which cover such a situation and whereunder the interested parties might find an appropriate remedy. It is difficult

to conceive the effect of upholding the right to resort to 77B under circumstances such as are here disclosed, but it does not require much imagination to see that such a construction of the statute would be far reaching indeed.

The circumstances are, that there was here set up a simulated, sham or fictitious situation which was presented to the Court as the case of a distressed debtor corporation entitled to relief under the act in question, when in fact the title to the debtor corporation was conveyed for the only purpose of itself creating such situation.

(c) The fraudulent reorganization plan intended to be approved by the State Court was transferred to the District Court.

Samuel J. T. Straus, the trustee on the Annex bond issue, was a member of the Protective Committee. Sidney H. Kahn, the senior executive of S. W. Straus & Co., was another member (Tr. 10). It was he who purchased the property at the junior foreclosure sale for his company, and after acquiring the title defaulted in paying the taxes, which precipitated the acceleration of the bond issue by his co-director, Samuel J. T. Straus. These two gentlemen were the members of the co-partnership of S. W. Straus and Company, the instrumentality of S. W. Straus & Co., who placed the bond issues in the market, and later became the secret owner of the property. Melvin L. Straus, the trustee on the "Hotel" bond issue, was a director and vice-president in the same corporation. All the original members of the committee were the active officers of the company. (Tr. 10).

The representations:

It is they who represented to the investors that they recognize having "a duty to their clients" (Tr. 40); that

they would take *every precaution* to safeguard the interest of the investors, and that this precaution will not only be taken at the date of the marketing of the securities, but also *during the lifetime of the bonds* (Tr. 41). They stated that "Too much emphasis cannot be laid upon the amortization and monthly payment features," both of which were "integral parts of the Straus Plan," and that its securities were "*surrounded by a chain of safeguards.*"

Broken promises:

After promising every protection to the bondholders in order to sell them the gold bonds they betrayed the trust and confidence reposed in them. As early as 1925, in the boom of the real estate market, the two bonds issues were defaulted and the mortgagors ceased to exist. Samuel J. T. Straus entered into possession of the "Annex" and Melvin L. Straus, likewise entered into possession of the "Hotel" in May, 1925 (Tr. 48). In reality the Hotel and Annex were but one unit (Tr. 22) and the Straus organization was in possession of the property which was operated as one unit. Under the terms of the sale the bondholders had the right to return the securities at a discount of one per cent (Tr. 40). If the trustees had notified the bondholders in 1925, that the two issues were in default they would have either exercised their option to return the bonds, or would have taken some action (Tr. 52). Therefore, the trustees, interested in the investment house, *concealed* such facts. The House cashed the coupons without informing the bondholders that the issues were in default and it was advancing the funds. Thereby it was able to advertise that the House has a record of "Forty-two years without a loss to any investor" (Tr. 40) and the investors relied thereon and continued to purchase its securities.

These trustees whose *first duty it was to inform the beneficiaries* of the existing defaults and *to use the income in discharge of tax liens* and thereby preserve the security and avoid penalties, *used the income to reimburse the House* for its defaulted bonds and coupons. Because of such diversion of funds, a tax receiver was appointed (Tr. 59). A total of $239,532.43 was paid by the trustees to the House for defaulted bonds and coupons (Tr. 54). The 1928, 1929 and 1930 taxes were not paid. The House, Sidney H. Kahn, and the committee members, organized a corporation known as "Trustees Management Service" and supplied groceries, meats, carpets, furniture, engineering service and supplies (Tr. 56, 57) to the properties "managed" by these trustees, at large profits to the organization, wherein they are all beneficially interested. The promise to safeguard the investors' money by the monthly deposits was broken, and no such monthly deposits were made. The bond owners were not informed of such conditions.

Fraud upon the Court:

With such conditions existing since 1925; with the fact that the House became the owner of the property as a result of the purchase by Sidney H. Kahn at the junior foreclosure sale, and with the knowledge that the interest of Samuel J. T. Straus and Melvin L. Straus (as officers of S. W. Straus & Co., the owner) were in *conflict* with the superior interest of the bondholders, and that they were grossly negligent in diverting the funds from 1925 to 1931, and guilty of deception and concealment of material facts (*Meyer* v. *American Nat. Bank and Trust Co.*, 277 Ill. App. 378) they initiated two separate foreclosures on each of the bond issues as the *sole* representatives of the bondholders, and alleged in their bill that their interest was not in conflict (Tr. 53).

Samuel J. T. Straus, the only representative of the bondholders in the Annex foreclosure, procured the entry of a decrée (Tr. 47), which found that Sidney H. Kahn was the owner. This was untrue and a deception upon the Court. The decree found that certain bonds and coupons were paid between 1925 and 1930 (Tr. 47). Who paid these bonds? The trustee was in possession for the first mortgage bondholders whose rights were superior to those of the House for its defaulted bonds and coupons. *He paid those bonds without even paying the taxes!* For such gross negligence he was rewarded a fee for himself and his counsel in the sum of $27,000! Melvin L. Straus procured a similar decree on the "Hotel" (Tr. 45, 46). If the Court knew of the facts it would have never entered such decrees and approved the accounts of the trustees in proceedings to which the bondholders were not parties.

Serving two masters:

The members of the committee were all active officers of S. W. Straus & Co. (Tr. 53). As such they owed allegiance to it and had the duty to safeguard its interest as "owner" and as the holders of subordinated bonds. As a Protective Committee it was the trustee for the superior lien of the bondholders whose interest was *opposed to that of the "owner" and "junior lien holder."* This committee could only serve one master. *It could not serve the House and the bondholders at the same time.* It was concealed from the bondholders that the House was the owner and the holder of the junior interest until after the entry of the decrees and the adjudication of the rights of the parties (Tr. 52, 53). Could such a committee honestly represent the bondholders? Under the deposit agreement it became the legal and equitable owner of the bonds (Tr. 12). Would the bondholders have entrusted to the active officers of S.

W. Straus & Co., the owner of the property and subordinate interest the right to exchange, subordinate and commingle them? It is this committee which coerced all bondholders to part with their legal and equitable title to their bonds and to deliver them to its depositary, the Straus Bank, at the threat that the non-depositors would be frozen out at the judicial sale (Tr. 50). By such means it accumulated ninety-five per cent of the bonds. They were acquired by deception and duress.

The fraudulent plan:

In July, 1933, the committee announced its plan of reorganization (Tr. 49). A sale was to be made at the *lowest* price, so that the non-depositors would only receive the proceeds of the sale, and will thereby be compelled to become depositors. The depositors who would dissent from the plan were required to pay three per cent of the face amount of their bonds (Tr. 50) and would only participate in the proceeds of the lowest bid. Thereby the committee assured itself that the depositors will not dissent and the non-depositors will become depositors. It gave them *a last chance* to do so until August 12, 1933 (Tr. 30). The bonds of the depositors will be exchanged for common stock and the vote will be vested in the persons selected by the committee (Tr. 24, 25). Sidney H. Kahn is one of the trustees. *Ten per cent of the total issue would be given to S. W. Straus & Co. for its junior interest.* It will be on parity with the bondholders as to the ten per cent, and *will control the ninety per cent through the trustees chosen by its committee!* The cash available will be paid to the committee, to the Straus Depositary, to its counsel, to the trustee, and for reorganization expenses. They did not choose to take the common stock for their fees. They appropriated the cash to themselves.

Prevention of plan:

It was for the purpose of preventing the fraudulent plan in the State Court that appellant commenced her proceedings. She asked for the removal of the trustees, an accounting, for the removal of the committee, for the return of the deposits to her, as well as to all other bondowners. She asked for an injunction and receiver. The hearing was set for February 13, 1935.

Scene changed:

It was this fraudulent plan which was presented to the District Court (Tr. 20). The persons who initiated the fraudulent foreclosure proceedings in the State Court, and who intended to carry out the plan there *via* the two foreclosures, are the same persons who filed their plan in the District Court. Should the District Court have lent its aid to such a committee? Should it have interfered with the jurisdiction of the State Court to enjoin such a fraudulent scheme? Was it not its duty to dismiss the proceedings when the facts were disclosed to it from the petition of this appellant?

The consent was given by the "Debtor" on the day the matter was set for hearing in the State Court. This was done in order to deprive it from jurisdiction. This was fraud *per se.* (*Harkins* v. *Brundage,* 276 U. S. pp. 45, 56.) The answer of the "Debtor" did not reveal the facts to the Court. *Its aid was invoked to escape trial on charges of fraud and gross negligence.* It was invoked to put over this fraudulent plan.

Deceptive statements:

The bond issue on the Hotel was made in 1919. Under the Illinois law pertaining to mortgages made in the years 1917 to 1921 *no redemption rights existed after the foreclosure sale.* (*Smith-Hurd,* 1933 Ill. Rev. Stat. Chap. 77, Sec. 16, p. 1733.)

The decree on the "Hotel" was entered February 9, 1932. (Tr. 45.) If the trustee had made the sale at the expiration of fifteen months, on May 10, 1933, the purchaser would have obtained a Master's deed and *the interest of S. W. Straus & Co. as "owner"* and "junior mortgagee," would have been completely wiped out and the bondholders would have received the title to the whole property. This was not to the interest of the House, its committee, and its trustee, so no sale was made! With knowledge of the facts that under the law pertaining to this issue the period of redemption no longer existed from the date of the sale it stated in the plan (Tr. 24) that the ten per cent was given to avoid a redemption and thereby "substantially shortening the time required to effect the reorganization." Why should a bondholder of the "Hotel" surrender ten per cent when the trustee could have made the sale and thereby acquire the title without any toll to the company? It is the dual position of the committee which is responsible for such result. It is serving its Master, the House, which solicited it.

When the petitioner, Nettie Meyer, presented her petition and pointed out to the Court the features of the inequitable plan, the mode how the committee acquired her bonds as well as the ninety-five per cent of the other bondholders', when it learned of the betrayal of the trust duties and obligations and the fraud that was put over in the State

Court proceedings, and that a hearing was set there to obtain some relief and to prevent the accomplishment of the fraudulent plan, it was his duty to dismiss the proceedings for bad faith and want of jurisdiction.

Certainly it was the duty of the reviewing court to hear the case on the merits even if there was no appeal below as it could have treated it as an application for leave to appeal.

(d) It was the duty of the District Court to relinquish its jurisdiction in favor of the State Court.

In two of its most recent decisions this Court held (*Penn.* v. *Williams*, 294 U. S. 183; *Penn. General Casualty Co.* v. *Penn.*, 294 U. S. 195, 75 L. Ed. pp. 385-392) that Federal Courts should decline to interfere with State jurisdiction, and it is their duty to relinquish such jurisdiction. Here was a case which was pending in the State Court for years. The same plan was to be submitted in the State Court. It was attacked there as a fraud by Nettie Meyer, one of the petitioners. Under the views expressed by this Court in the above decision it was the duty of the District Court to decline to interfere with the pending proceedings. The State Court had taken jurisdiction of the *res* and of the subject matter involving fraud and an express trust, both of which were peculiarly within its sole jurisdiction, and the Federal Court was without jurisdiction to interfere. (*Reconstruction Finance Corp.* v. *Zimmerman*, 76 Fed. (2) 313, 4 C. C. A.)

VII.

The amendment to the Bankruptcy Act in so far as it interferes with the jurisdiction of all courts and vests exclusive jurisdiction in the District Court without regard as to the time and progress of the proceeding, is a legislative encroachment on the judiciary and is repugnant to the spirit of the Constitution which provides for a separation of powers.

The government, under our Constitution, is divided in three departments—the Legislative, Executive and Judicial. Each is supreme in its own sphere. The encroachment of one department on another is prohibited (*Kilbourne* v. *Thompson*, 103 U. S. 168). The Constitution vests the judicial power in the judiciary and its power is indestructible by the legislative branch. An extension of jurisdiction of a court can only be made if it is not infringing on the jurisdiction of any other court (*Sampeyreae* v. *U. S.*, 7 Pet. 222, 8 L. Ed. 665).

(a) Section 77B is an encroachment both on the Federal Courts, as well as on the State Court.

A court may have a case under its exclusive jurisdiction for years, and have devoted a great deal of time in deciding many of the issues involved, and a party may defeat its jurisdiction by the mere filing of a petition. The subject matter in the equitable proceeding may be completely foreign to bankruptcy, yet, a Bankruptcy Court may deprive it of the exercise of its jurisdiction. A court may be engaged in the middle of a trial involving fraud and the defendant, to escape punishment for his fraudulent act, may file a petition for reorganization, and the

tribunal is powerless to act. The amendment to the Bankruptcy Act destroys the sovereignty of all courts and deprives them of their functions and duties and relegates them to mere puppets subject to the control of any District Judge who may, by the stroke of his pen, annul the painstaking efforts of a court of competent jurisdiction. There is no limit as to time nor subject matter. A final decree of a court of equity is annulled by the act, no matter when rendered. Such an amendment deprives the judiciary of its function and is contrary to the very letter and spirit of our constitutional form of government.

The *tripartite* distribution of power is the fundamental system of our constitutional form of government. It is beyond the power of Congress "to withdraw from judicial cognizance any matter from which by its nature is the subject of a suit at common law or in equity or admiralty (*Williams* v. *U. S.*, 289 U. S. 555, 579)." It is essential to the successful working of the system "that the person who is entrusted with power in any one of these branches shall not be permitted to encroach upon the powers confided to the others (*Kilbourne* v. *Thompson*, 103 U. S. 168, 191).

(b) Section 77B in so far as it attempts to control matters which have proceeded to final judgment or decree is void.

The legislature may control remedies, but when the matter has proceeded to judgment, it has passed beyond legislative control (Cooley's Constitutional Limitations, p. 192). The act removes a case from the control of the Court without regard to the finality of the judgment and the stage of the proceedings. It is an usurpation of the powers of the judiciary.

(c) The Court was without jurisdiction to exchange the bonds for stock and to place the junior interest on a parity with the superior interest.

The plan which the District Court approved, exchanged *the bonds for stock* and gave a ten per cent interest to the *junior interest on a parity with the superior interests.* It is our contention that the Court was without jurisdiction to do so, and if the intent of Section 77B was to vest the Court with the power to abrogate the obligations of contracts, then it was repugnant to the Constitution of the United States. In construing the Frazier-Lemke Act under Section 75S, the Supreme Court of the United States says (*Louisville Joint Stock Bank* v. *Radford,* 79 Law Ed. 920, 929):

> "No Bankruptcy Act had undertaken to supply him capital with which to engage in business in the future * * * but unless the mortgagee released his security, in order to prove in Bankruptcy for the full amount of the debt, a mortgage even of exempt property was not disturbed by bankruptcy proceedings."

It further says:

> "No Bankruptcy Act had undertaken to modify in the interest of either the Debtor or other creditors any substantive right of the holder of a mortgage valid under Federal law."

The Court further says:

> "The bankruptcy power, like the other great substantive powers of Congress, is subject to the 5th amendment. Under the bankruptcy power Congress may discharge the Debtor's personal obligations, because, unlike the States it is not prohibited from impairing the obligation of contracts * * * but the effect of the Act here complained of is not the discharge of Redford's personal obligations. It is the taking of sub-

stantive rights in specific property acquired by the bank prior to the act. * * * No provision permits the mortgagor to obtain a release or surrender of the property before foreclosure without paying in full the indebtedness secured."

In the instant case substantial property rights were taken away from the bond owners, the mortgagees, and surrendered to the defunct corporation, which is not even the mortgagor, and other rights were taken away from the bond owners and given to the junior lien holders. The capital of the mortgagee was taken away to supply capital to the corporation which never was possessed of the property, which was never in business. It is a violation of the Constitutional right, and certainly a party ought to have his day in court.

CONCLUSION.

The record in this cause discloses the inner workings of the "investment banker," which controls (1) the "promotion" of the securities and their "manufacturer"; (2) the distribution to the investors; (3) the trust company, which was to protect the investors; (4) the machinery of the court proceedings; (5) the judicial sale; and (6) the control of the property via its protective committee. (See "Other People's Money," by Mr. Justice Brandeis.)

What a picture this record presents!

Two separate bond issues were floated for $1,000,000 each on a property which could only be operated as one unit. The two bond issues were defaulted as early as 1925. The two trustees were in possession since 1925, but such facts were concealed from the bondholders. The trustees who were in possession for the benefit of the bondholders, paid the income to the House on its defaulted bonds. The House

became the owner. Its active officers became the Protective Committee for the bondholders. The House as "owner" failed to pay the taxes, and the trustees, its officers, foreclosed the two bond issues. They foreclosed against themselves, against the House they represented. On the one hand they were interested in the equity owned by their company, and on the other hand, they claimed to represent the bondholders whose interest was superior. The committee was in the same dual position. They were both serving two masters, but held out to the Court that they only served one, the bondholders. They prepared a plan of reorganization, which would deprive the bondholders of their security and place the Straus organization in control of the property for fifteen years. When an attempt was made to stop their scheme in the State Court, they sought refuge in the District Court.

The District Court assumed jurisdiction and approved the plan with certain modifications. The bondholders were relegated to valueless stock holders. The junior interests were given ten per cent of the stock on parity with the superior interest. The suit for fraud and gross negligence was permanently restrained. No review was allowed! Will this Court permit such a procedure? Does this constitute due process?

We hope that this Court will allow the writ.

Respectfully submitted,

MEYER ABRAMS,
MAX SHULMAN,
Attorneys for Petitioners.

IN THE

Supreme Court of the United States

October Term, A. D. 1935.

Nos. 375 and 376

NETTIE MEYER, ANNA JACOBSON, JACOB MEYERHOFF, JOSEPH MEYERHOFF, JULIUS MEYERHOFF, JOHN C. PANKIN and RAY MANN,

Appellants,

vs.

KENMORE GRANVILLE HOTEL COMPANY, *et al.*

Appellees.

On writ of certiorari to the Circuit Court of Appeals for the Seventh Circuit.

Reply Brief for Appellants.

MEYER ABRAMS,
MAX SHULMAN,
134 N. LaSalle St.,
Chicago, Illinois,
Attorneys for Petitioners.

HOMER LANDAU & CO., CHICAGO, ILLINOIS

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IN THE

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October Term, A. D. 1935.

NETTIE MEYER, ANNA JACOBSON, JACOB MEYERHOFF, JOSEPH MEYERHOFF, JULIUS MEYERHOFF, JOHN C. PANKIN and RAY MANN,

Appellants,

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KENMORE GRANVILLE HOTEL COMPANY, *et al.*,

Appellees.

REPLY BRIEF FOR APPELLANTS.

Preliminary Statement.

At the threshold of this case is the question of jurisdiction of the subject matter, the constitutionality of Section 77B, which was challenged in the petition (pp. 30-33). Appellees' brief failed to discuss this whole subject. A prompt settlement of the constitutionality of this Section will be of great public benefit. It will solve the complicated problems of the numerous reorganizations, which are now taking place in the various Federal districts by which fixed liabilities of mortgage debts are exchanged for "voiceless" stock and junior interests are placed on parity with superior interests under the pretense that such is the "spirit of 77B."

We urge upon this Court to squarely pass upon all the questions raised by the petition and not to merely confine itself to the questions raised on matters of procedure on appeal.

The question whether in a reorganization proceeding under Section 77B the District Courts are authorized to exchange bonds for stock, to take away a percentage from the superior interests and to donate it to junior interests, as was done in this case as well as in numerous other cases, is a question of primary importance to the bench and bar as well as to the general public, which is greatly affected thereby. It will serve no useful purpose to merely pass upon the questions of procedure and to transmit the case to the Circuit Court of Appeals to pass upon the merits, for that Court is now committed to the doctrine that under 77B it is not necessary to show any equity in the property on the part of the debtor or the junior interest in order to give them an interest on parity with the bond owners. The spirit of 77B has engulfed many of the Federal District Courts with the idea that it was the intent of Congress to take away a share from the superior interests and to donate such share to junior interests without any evidence as to the value of the property, the feasibility of the reorganization plan, and the nature of the debtor's business. In many instances, as in the case at bar, corporations which were never in business, and whose mere organization was a subterfuge, were allowed to avail themselves of the provisions for corporate reorganizations, which were designed to aid bona fide corporations from their financial distress. This Court has the right to decide all of these questions, even while the subject matter was pending in the Circuit Court of Appeals prior to a decision (28 U. S. C. A. Sec. 347(a), Jud. Code, Sec. 240(a) as amended; *White* v. *Mechanic's et al.*, 269 U. S. 283, 299). *A fortiori* here where the cases were disposed of and the Court has the right to pass upon all questions.

The "Statement of the Case."

Appellants' petition stands as the brief, and appellees' brief is designed to answer the points as they are stated in the petition. The rule of this Court (Rule 27) only permitted "corrections" in the "statement of the case" as stated by appellants, or to point out "inaccuracies" or "omissions." Counsel have not pointed out any inaccuracies or omissions. Their "Statement of the Case" comprising seventeen pages, is far from being "concise," even if such were necessary.

The "Statement" contains "facts" which are not justified by the record. It refers (p. 6) to the record (R. 125, 160) for the "fact" that S. W. Straus & Co. advanced $322,441.25, and that the Nomis-Suarts Corporation (an affiliate of S. W. Straus & Co.) advanced $73,371.45. The references are to the self-serving declaration of the appellees (R. 125) and to the statement of their counsel (R. 160), without any proof to support such facts.

It is also stated as a "fact" (p. 7) that the indebtedness of the two bond issues was "assumed" by the debtor. This statement, evidently of *great importance* in order to convince this Court that there was a "debtor" and "creditor," is claimed to be supported by the record (pp. 123, 160). The first reference is to the agreement between the alleged "debtor" and the "committee" *made February 26, 1935,* one day *after* appellant, Meyer, filed her petition (R. 37), wherein she asserted (R. 64) that there was no debtor and no creditor to confer jurisdiction. Certainly this subsequent agreement to supply the "debtor" and "creditor" or to create such parties did not supply the jurisdictional requirements of debtor and creditor to initiate the proceedings. The second reference is to the statement

of counsel (R. 160) without any proof, and was evidently based on the foregoing agreement. The statement (p. 7) that possession was delivered to the trustees under the first mortgages and "the income applied for the benefit of the first mortgage bondholders" is also claimed to be sustained by the record (R. 22). A mere glance at it will disclose that this was *a self-serving statement of the committee.* The petition of Nettie Meyer clearly shows how the income was used (R. 54). This verified petition must be taken as true in view of the motion to dismiss (R. 88) which operated as a demurrer and admitted the facts well pleaded. Besides, it referred to the decrees, which were entered in the proceedings conducted by the committee, and which show that the trustees were in possession of the premises since 1925, and used the income up to the date of the foreclosure proceedings to reimburse their House for moneys advanced on defaulted bonds and coupons. Thereby the bondholders were led into the belief that the bond issues were in good standing, and were induced to make new investments in similar securities.

The "Statement" refers (p. 7) to the "drastic effect of the depression" during the years 1931 to 1933, but ignores the fact that the bond issues in question were in default in the good years—from 1925 to and including 1929, prior to the date when the real estate market collapsed.

Counsel quote (p. 4) at length from the opinion of the District Judge to the effect that he did not intend to restrain the suit of Nettie Meyer. His intentions are not controlling. *It is his act that counts.* If a reading of the opinion may give an impression that the District Judge did not intend to restrain the action, *the intention is contradicted by his acts in entering the order* (R. 93) whereby he refused to dissolve or even modify the injunction, and which temporary

injunction was made permanent by his final order (R. 157) and restrained Nettie Meyer and any other bond owners from commencing or *prosecuting a suit of any nature* against the trustees or any of them.*

The statement (p. 5), that "Nettie Meyer chose not to participate" in connection with the hearing on the confirmation of the plan, is also contradicted by the record. She filed her petition wherein she assailed the proposed plan of the committee as a fraud, asserted that the conveyance to the debtor was fraudulent, and that there was no debtor nor creditors, and that the Court was without jurisdiction. In their footnote, (p. 4) counsel concede that the Court did not dismiss the petition when it denied its prayer to dismiss the proceeding and to dissolve the injunction, but reserved the petition until the hearing on the plan of reorganization. What was the object in denying the motion to dismiss the petition, but reserve it to the hearing? It was the intent that this petition stand as objections to the plan, and there was no reason or necessity to file any other objections. This petition was not withdrawn, and her counsel appeared and argued the case, and the record shows that it was urged that there was no debtor nor creditor (R. 160).†

The contentions.

In stating appellees' contentions (p. 16) they failed to state their position as to the fairness of the plan, and as to the constitutionality of the Act, both of which matters were raised in the petition (p. 6) and discussed in the argu-

* How the District Court was able to preserve the right of action in the Debtor, who was itself the target to the fraudulent charges, is more than a mystery. It was certainly not reflected in its final order.

† It is true that the objections to the fairness of the plan were filed on behalf of the other bondholders, and not in the name of Nettie Meyer. The reason is apparent. She had her objections on file in the form of the Petition, and the additional objections were filed on behalf of the other bondholders.

ment (pp. 30, 33). Some reference, however, is made in their summary (pp. 26, 27) and in the argument (pp. 54, 55). We therefore, assume that through some error they failed to state among their contentions that they also contend that the plan was fair and equitable, and that the Act is not repugnant to any constitutional provision.

We will, therefore, treat this reply as if such contentions were actually made, and will attempt to reply to the rather confused argument in the chronological order.

I.

The order of March 20, 1935, refusing to dissolve the injunction and to dismiss the proceedings for want of jurisdiction was appealable.

(No. 5491 C.C.A. and No. 375 here.)

Appeal allowable under 24a:

An attempt was made (p. 33) to distinguish the cases relied on by appellants from the instant case on the ground that in the cases cited, the adverse claimant claimed a lien on "specific property," and in the case at bar "all of the property of the Debtor" was in the hands of a receiver, appointed to subject the property to the payment of taxes. The tax receiver was not possessed of the claim, asserted against the two trustees, for malfeasance and misfeasance in office. The receiver was not possessed of the funds which were diverted by the two trustees and turned over to their House during the years they were in possession from 1925 to 1931. Neither the tax receiver nor the Bankruptcy Court had any concern with such claims, which *were for specific property.* Nettie Meyer asserted in the State Court that

the conveyance to the Debtor was a fraud and *claimed adversely to the debtor,* and adversely to the jurisdiction of the District Court. Having asserted such claims on specific property, the Court was without jurisdiction to restrain such proceedings, and she had the right to appeal. Nettie Meyer commenced her proceedings prior to the approval of the 77B proceedings. The jurisdiction of the District Court commenced *from the date of the approval* of the petition under 77B and *not from the date of filing* (*Fox Metropolitan Playhouse,* 74 Fed. (2nd) 722; Sub-section (k) of 77B).

Appeal allowable under 25a:

It was not necessary to rely on 25a to sustain our position as to the right of appeal, but counsel have seen fit to urge that no appeal lies under 25a. We will therefore, reply to this argument.

25a applies to "appeals from judgments adjudicating or refusing to adjudicate a defendant, a bankrupt." Subsection (k) of 77B makes the approval of the petition *effective as an adjudication* in bankruptcy. It specifically says: "The date of the order approving the petition or answer under this section shall be taken to be the *date of adjudication,* and such order shall have the *same consequences and effect as an order of adjudication.*" In the face of this statute how can it be argued that the approval of a petition does not constitute an adjudication for appeal purposes? The intent of Congress was clear, and therefore, it provided no other modes of appeal due to the fact that Sections 24 and 25 of the Bankruptcy Act apply to all amendments thereof. (28 U. S. C. 225c; Jud. Code, Sec. 128.) The word "defendant" used in 25a is substituted by the word "debtor" under 77B. It therefore, follows that 25a governs the

right of appeal from the order approving the petition, which constitutes an adjudication under the act.

The view expressed above was taken by the Circuit Court of Appeals for the Tenth Circuit in *Humphreys* v. *Bankers Mfg. Co.* (Bankruptcy Law Service, par. 3597, August 26, 1935). The holding there is squarely contrary to the decisions rendered by the Seventh and Eighth Circuits and is the more logical.

II.

The appeal from the order refusing to dissolve the injunction and to dismiss the proceedings for want of jurisdiction presented a substantial issue.

Counsel say (p. 41) that they understand our position to be that the allegations contained in the verified petition of Nettie Meyer must be taken as true in connection with the appeal. This is indeed our position. When a matter is heard upon a verified petition upon a motion to dismiss (R. 88) which constitutes a demurrer, and the Court denied its prayer "without hearing evidence," it must be presumed that the allegations, well pleaded therein, were taken as true. (21 Corpus Juris, page 638, sec. 814.) The order in this case (R. 93) recited that the Court denied the prayer of the petition on mere argument and "without any evidence." In view of this, we will not burden this Court with any reply to the contentions that the allegations of the petition were not conceded as true, and were mere "innuendoes."

Appellees started out under the heading to show that there was "no substantial issue" but have *sidetracked* this issue with an argument that there was need for reorganization. It is difficult to reply to such a confused pres-

entation. We will deal with the question of the need for reorganization under the proper heading. As far as the issue under this heading, it is sufficient to say that an appeal which challenges the jurisdiction of the subject matter and which seeks to set aside an injunction does present a "substantial issue."

The contention (p. 44) that these proceedings "in no way hindered the prosecution by Nettie Meyer of any perpetrated cause of action" is contradicted by the acts of the parties and by the record. *They urged the restraining order in opposition to the proceedings in the State Court* (R. 63). The Court refused to dissolve the injunction (R. 93). It was made permanent by the final order (R. 157). How Nettie Meyer could proceed with her lawsuit in the face of the temporary injunction, which was made permanent, is more than a mystery.

III.

The appeal from the final order of confirmation was properly allowed by the District Court.

(Case No. 5531 C. C. A. and No. 376 here.)

It was conceded by counsel (p. 46) that an order confirming a composition in bankruptcy is appealable as a matter of right. They attempted to distinguish between such an order and a final order confirming a plan of reorganization, because in the former, "the debtor has done everything necessary to consummate a composition," while in the latter, the debtor must carry out the order of confirmation in the future, and they referred to the many things to be done under the order, as they have outlined in their brief (pp. 14, 16). The mere fact that counsel have

procured an improper order does not affect the rights of an appeal. The order of confirmation is to be a complete order to the same effect as a confirmation of a composition, and there should be nothing left thereafter to the discretion of the proponents of the plan. The argument that the approval of an order of confirmation amounts to a discharge, while an order of confirmation does not constitute a discharge, is devoid of merit. In a composition the discharge is only from matters included in the composition. The same thing is true on a confirmation of a reorganization plan. This operates as a discharge of all matters embraced by the plan. Sub-section (o) of 77B provides that the rights and liabilities of creditors and of all persons "shall be the same as if a voluntary petition for adjudication had been filed and a decree of adjudication had been entered on the day when the debtor's petition or answer was approved." Sub-section (g) of the Act provides that upon the confirmation of a reorganization plan the order of confirmation "shall be binding upon (1) the debtor, (2) all stockholders thereof, including those who have not, as well as those who have, accepted it, and (3) all creditors, secured or unsecured, whether or not affected by the plan, and whether or not their claims shall have been filed, and, if filed, whether or not approved, including creditors who have not, as well as those who have accepted it." It is evident therefrom that the approval of the confirmation operates as a discharge to the same effect as the confirmation of a composition. Counsel cite numerous decisions from several Circuit Courts of Appeal, which express the contrary view. We concede that they so hold, but in none of the cases was it pointed out that an order confirming a plan of reorganization is in legal effect the same as an order confirming a composition, which operates as a discharge and is appealable as a matter of right.

IV.

All of the appellants have a right to be heard on the appeal from the confirmation of the plan of reorganization.

The contention (p. 47) that only Nettie Meyer appealed from the order of confirmation is without merit. The petition for leave to appeal (R. 166) was by Nettie Meyer "in her own behalf and on behalf of all other objectors represented by Shulman, Shulman and Abrams." All other objectors who were represented by the same counsel (R. 141-143) were included in the petition, which was signed by counsel. The assignment of errors was by "Nettie Meyer together with all other objectors represented by Shulman, Shulman and Abrams, as they appear of record" (R. 166). *The order allowing the appeal* (R. 168) was "leave to appeal from the entry of the order approving the plan," and "*for the use and benefit of the other objectors.*" No appeal bond was filed but the bond for costs given on the first appeal was allowed to stand as the cost bond on the new appeal. There is certainly no merit in the point that the appeal bond was merely executed by Nettie Meyer. Even if a new appeal bond were given, it is of no concern to the appellees, for they can only recover the costs but once, and if they were dissatisfied with the form of the petition, order or bond, it was their duty to object below and not to raise it for the first time on appeal.

While they undertook to show under this point that the other appellants did not join in the appeal, they also seek to dispose of the appeal of Nettie Meyer. Of course, they could not say that she did not prosecute the appeal, so they ask (p. 48) "What complaint can Nettie Meyer make of the Order confirming the plan of reorganization?" And they

answer, "She made no objection to the plan." Our answer is that *her petition, stood as the objections to the whole proceeding,* and to the plan, by the order of the Court (R. 93). She was a party to the record, and her counsel urged her objection that there was no debtor nor creditor upon the hearing on the confirmation of the plan.

V.

The dismissal of the appeals allowed below and the denial of the petitions to permit an appeal above was an abuse of discretion.

In an attempt to justify the action of the reviewing Court in dismissing the appeals allowed by the District Court, and in refusing to allow appeals by the reviewing Court, they speak (p. 49) of "the attitude of the Circuit Court of Appeals for the Seventh Circuit" as it is revealed from the decision in another case (*Re: Sterba,* 74 Fed. (2nd) 413). The functions stated in the quoted portion of the opinion (p 552), that "it (the District Court) must act as the head of the Administrative Branch of an enterprise" and that "it must originate, if necessary, and in many instances use all forces at its command to bring about co-operation of conflicting interests" are certainly not functions of a judiciary. It was not the intent of Congress to change the administration of justice to "Administrative branches of enterprises" or that of reorganization bureaus—vassels in the hands of reorganization committees, and certainly not as *originators* of compromises of conflicting interests. If such were its functions, then it was indeed in controversion of our constitutional form of government. If the District Court be vested with such duties and functions, and if it also be true that their orders are not appealable as a matter

of right, then it would indeed be an end to all the sacred principles of property rights, and the safeguards of due process of law. If the "originators" of reorganization plans could complete their plans and the facts could in no way be reviewed, how could anyone be safe from the arbitrary acts of a District Court if it so chose to act. The attitude of the Circuit Court of Appeals of this Circuit was also expressed in this case. (See Appendix to Respondent's Brief in answer to the Petition). There, the reviewing Court stated its reasons in no uncertain terms. It dismissed the appeals taken below, and refused to allow appeals because (a) of the small investment of Nettie Meyer; (b) on the technical point that the other appellants did not sign the petition in person; (c) that the appellants were delaying a reorganization, and (d) that some of the appellants spoke through their counsel. The Court there said: "It is significant that the petitioner (Nettie Meyer) did not object to the plan." The plan, which was submitted by the committee, was the same plan which was assailed in her petition (R. 55) as a fraudulent plan, and made with the intent of depriving the bondholders of the value of their securities and "to relegate the bondholders to the position of stockholders." This petition was not dismissed, but was considered by the Court in connection with the confirmation of the plan. The objections urged in her petition were argued by her counsel (R. 141). In the face of this record we are unable to understand the statement that "it is significant that the petitioner did not object to the plan."

When the technical point was raised in the reviewing Court that the appeal taken by Nettie Meyer in her own behalf and on behalf of the other objectors was improper, it was sought to amend this technical defect by a petition in the name of all the objectors signed and *verified by their*

counsel. In denying the prayer for the appeal the reviewing Court said: "Let the others speak for themselves." Since when are parties not allowed to speak through their counsel? Does 77B also deprive them of such rights?

VI.

The reorganization plan was unfair and inequitable and the Court acted without jurisdiction.

Neither under their "contentions" nor under any heading under the various points did counsel indicate that they intended to argue the merits of the reorganization plan. They have done so however, in an indirect way under some of the points, and we will therefore reply to the indirect argument.

The merits of the plan were discussed in our petition (p. 32). We pointed out that the Court was without power or jurisdiction to take away 10% of the superior interests and to donate it to the junior interests. An attempt is made to justify such action (pp. 53, 54) under the theory that 77B was passed "not to extinguish the claims of junior interests." It is one thing not to *extinguish* a junior interest, and another thing to *deprive a superior interest* of a part of his securities and to *donate* it to a junior interest, or to give him a greater interest than he had. This is what was done in the instant case. *The District Court arbitrarily took away 10% from the bondholders and donated it to the junior interests.*

Counsel rely on the decision of this Court in a railroad case. (*Kansas City Terminal* v. *Central Union,* 271 U. S., 445, 454.) It was already pointed out by this Court (*First National Bank* v. *Flersheim,* 290 U. S. 504) that railroad

cases are distinguishable from other cases because in public utility matters the *benefit of the public* is to be taken into consideration, while in the other cases *only private interests exist.* However, even in the case relied on, the Court did not sanction the taking away of superior interests and its donation to the junior interests. The theory of the Court there was based on the fact that *new capital was invested.*

The *Kansas* case (271 U. S. 476) relied on by appellees, in support of their contention that a Court may approve a plan placing junior interests in the same position as superior interests, is squarely against such contention. In discussing the general principles of giving subordinated interests a share in the reorganized property, it there said (p. 454):

> "And *any arrangement* of the parties *by which the subordinate* rights and interests of the stockholders *are attempted to be secured at the expense of the prior rights* of either class of creditors *comes within judicial denunciation.*" *Louisville Trust Co.* v. *Louisville Railway Co.*, pp. 683, 684.

It further said (p. 455):

> "Unsecured creditors of insolvent corporations are entitled to the benefit of the values which remain after lien holders are satisfied, whether this is present or prospective, for dividends or only for purposes of control."

In disposing of the question whether "precedence to the entire claim of the creditor" must be given, it said (p. 455):

> "As above stated, to the extent of their debts creditors are entitled to priority over stockholders against all the property of an insolvent corporation. But it does not follow that in every reorganization the securities offered to general creditors must be superior in rank or grade to any which stockholders may obtain. *It is not impossible to accord to the creditor his su-*

perior rights in other ways. Generally, additional funds will be essential to the success of the undertaking, and it may be impossible to obtain them unless stockholders are permitted *to contribute and retain an interest sufficiently valuable* to move them. In such or similar cases the chancellor may exercise an informed discretion concerning the practical adjustment of the several rights." (Italics ours.)

It will thus be seen that the only time when a junior interest may receive an interest affecting the rights of superior interests is when "additional funds" are supplied or when the junior interests "contribute" a "sufficiently valuable" share to justify the equalization of the interest thus obtained. Here, no new capital was invested; nothing additional was contributed.

What was the basis of the allowance of the 10% in this case to the junior interests? If a court may take away 10%, it may equally take away 90%, and donate it to the junior interests. If it also be true that no appeal lies on matters of fact, what a great abuse was vested on an administrative "court," or rather, reorganization bureau. Counsel say (p. 54) that the fairness and feasibility of a plan of reorganization is essentially a question for the practical judgment of the trial court. This judgment should not be an arbitrary one. It must be based on proper evidence in the case. A showing must be made as to the value of the property and the equities based upon proper appraisals. (*First National Bank* v. *Flersheim, supra.*) This case is predicated upon the mere statement of counsel (R. 159, 160) and even such statement did not state the basis for the 10% donation. This 10% was taken away from appellants as well as from all other bond owners without any evidence and without any foundation, and with no basis for the order. It was certainly not due process of law.

The Court approved a plan which changed the fixed obligations on the two bond issues to that of holders of beneficial certificates in a trust, and the junior interests became partners to the extent of 10%. We searched appellee's brief for a justification for such action, but were unable to find same. The right taken away from the bondholders to collect on their bonds, to use the full mortgaged property to satisfy the debt, is a property right which cannot be taken away even by a Bankruptcy Court, which must also yield to the Fifth Amendment of our Constitution as held by this Court in the *Redford* case cited in our petition.

This property right, which was taken away, is more significant due to the fact that under the decree on the bond issue placed on the "Hotel," a sale at any time after May 10, 1933, *deprived all equities of redemption* under the peculiar Illinois law as to trust deeds made between 1917 and 1921. (See Petition p. 28). The bondholders of that issue had a vested right by the decree. *Of this right they were deprived in these proceedings without due process of law* (*Stewart* v. *Keyes*, 295 U. S. 403, 417).*

The decree of the State Court, which fixed the liability of the mortgagor under the bond issue on the "Hotel" which was entered in the year 1931 under the statute of Illinois affecting bond issues made during the years 1917 to 1921, *deprived the mortgagor from any redemption fifteen months from the date of the decree,* as distinguished from the decree on the annex, where *the right of redemption still existed* from the date of the sale. On one bond issue the right of redemption had expired. On the other bond issue the right of redemption is still in existence. The com-

* A very interesting case involving the interference of Federal Courts with vested rights of mortgagees under the Illinois statute was just recently rendered by the United States District Court for the Southern District of Illinois, and is reported in the Bankruptcy Law Service, par. 3658, p. 1691, which opinion is illuminating on this subject.

mingling of the two properties under one plan, which deprived the bond owners of the "hotel" property to the extent of 10% of their investment, was unwarranted. It deprived them of their property without due process of law, and the District Court failed to give full faith and credit to the State Court decree, which gave the bondholders a vested right. (*Broderick* v. *Rosner*, 294 U. S. 629, 645.) If there be some justification for giving 10% to the junior interest on the "Annex" bond issue in lieu of their equity of redemption, there is certainly no reason to give them 10% on the "hotel" property, *where the equity of redemption had expired.* The only justification for this *gift* is the statement of counsel (p. 54) that the purpose of 77B was to give "an equitable modicum of participation to the holders of junior claims who co-operate in the reorganization, *a participation offsetting their rights of redemption.*" Assuming that this was the purpose, which we deny, what is the justification for the taking away of 10% on the "hotel," when no equity of redemption existed? If a sale were made under that decree, the purchaser would have received a deed of conveyance with no right of redemption. There is nothing that the junior interests could have done except to bid at the sale and pay the full amount that is due.

We take issue with counsel on the purpose of the Act. It was not its purpose to make gifts or to create a forum for bargains and compromises between superior and junior interests to be staged in the District Courts. The purpose of the Act was to come to the aid and rescue of *bona fide corporate bodies,* who were financially in distress, and *had capital to save above the indebtedness.* It was not enacted for the purpose of *creating* corporations or to *resurrect those who were deceased.* Here were two corporations which were created to execute bond issues enabling the house of issue to float the bonds in the market and to make

profits, and to thereafter disappear. The two bond issues were in default since 1925, and the two trustees, officers of the house of issue, were in possession because of the defaults, but such facts were concealed from the investors in order to encourage them to keep the gold bonds and to purchase new ones. The corporations, who were primarily liable on the bonds, were allowed to be dissolved, and the house of issue obtained title by a junior foreclosure, and its *Trustees used the income to reimburse it for moneys invested in defaulted bonds and coupons.* To conceal the fact that the house of issue was the owner, a new corporation was organized (the Debtor), but *this Debtor was never in possession, was never in business,* and was a mere paper organization for ulterior motives. The house, which secretly owned the property, failed to pay the taxes, using the income for its defaulted bonds, and had its officers, the two trustees, foreclose the whole issue because of alleged defaults of the mortgagors, which have long ago ceased to exist. It acquired two decrees in favor of its trustees and organized a committee, originally of its own officers, and to this date one of its vice-presidents, Sidney H. Kahn, is a member of the committee, ostensibly protecting the bond owners, but in reality, protecting his own interest. It would be strange to hold that Congress had in mind such corporate reorganizations.

No new capital was invested by the proponents of the plan. Instead of proceeding with the foreclosure and distributing the proceeds among the bondholders, a new plan was adopted, which exchanges the interest of the bond owners for stock in a corporation controlled by trustees. How will the bondholders ever get anything for their investments? We think that if the Circuit Court of Appeals would have applied its reasoning of the recent case it decided (*Oak Park Trust & Savings Bank* v. *Lyda Glen Van*

Doren, Nov., 1935, not yet reported) under Section 74 to Section 77B, the results would be different. There it said:

> "It was never intended that Section 74 would afford the relief by extension to those Debtors so hopelessly involved as to hold no reasonable expectation of ability to pay in the reasonable near future. For such Debtors an extension is only a postponement of the day when general bankruptcy is to engulf them and affords no genuine beneficial result either to them or to their creditors."

In that case the Court referred to the Statute on Compositions and held that no extension under 74 should be entertained when the debtor does not contribute in cash the cost of administration, and the discharge of the tax liens. 77B is but one of the forms of composition, and the principle announced to 74 also applies to it. Here the debtor was allowed to obtain the approval of a plan by which no contribution was made towards the payment of the cost or to the discharge of the tax liens. A tax receiver was in possession when the petition was filed. The sum of $129,669.70 is still due for the balance of the taxes for the years 1929, 1930, 1931, 1932, 1933 and 1934 (R. 69). The order of confirmation reserved jurisdiction to tax the fees as costs superior to that of the bond owners (R. 156).* If a property could not even pay the taxes, when no interest was paid to the bond owners since the entry of the decree in 1931, how can bond owners expect to realize anything for their investment under the new reorganization? It will take years before they will see a sign of a dividend.

It was not our purpose in objecting to the plan to interfere with a bona fide reorganization. The reviewing Court, which dismissed the appeal of Nettie Meyer, because of its

* Since the allowance of the certiorari here the District Court entered an Order on November 7, 1935, allowing fees, which Order is now the subject matter of another appeal.

conclusion that with a small investment she attempted to block a reorganization of $2,000,000, completely overlooked that we have presented a feasible plan, which would have protected all interests in accordance with their respective holdings. We originally raised a jurisdictional question, and when the District Court overruled us, we appealed and asked the Court to stay the proceedings pending the disposition of the appeal. The Court determined to proceed with a reorganization. On behalf of other bond owners, who were given notice to appear at the hearing on the confirmation of the plan, we presented to the Court in their behalf a proposed plan which gave the first mortgage bondholders Class "A" stock as a superior interest, Class "B" stock to the junior interest as a subordinate interest, and Class "C" stock as an inferior interest to the owner. This would have given each class its proper interest (R. 144). What was there "too complicated" as characterized by the District Court? (R. 164). We believe this plan was "simple as possible." If the purpose of 77B was to save the investment of junior interests, not at the expense of the superior interests, this plan was the only equitable and feasible plan, and may be a guide for future reorganizations if the Act be constitutional.

Under Point VI we discussed in the petition (pp. 19-29) the merits of the controversy, but counsel's brief did not discuss such matters. They evidently could find no answer.

VII.

The constitutionality of Section 77B.

Under Point VII we discussed the constitutionality of Section 77B (pp. 30, 31) and counsel for appellees ignored the whole subject matter. In addition to the authorities

cited in the petition we cite here the case of *Worther Co.* v. *Cavenaugh* (295 U. S. 56) on the point that the change in the remedy, which deprived the bond owners from their vested rights under the trust indenture on the "Hotel" as well as under the decree, is "an unconstitutional impairment of the obligation of contract (U. S. Constitution, Art. 1, Sec. 10)," particularly in view of the provisions of Section 77B, which authorize the payment of fees out of the mortgaged property for the expense of the Debtor (the mortgagor). It is true that in a bankruptcy case the cost of administration may be paid out of the bankrupt's estate. This is not so in a composition where such costs must be paid by the debtor. The taking away from the mortgagee of the proceeds of the security to pay the mortgagor's liabilities is an impairment of the right of contract, and that part of the Section is certainly repugnant to Article 1, Section 10 of our Constitution. The taking away of 10% from superior interests and the donation thereof to junior interests without an appraisal of the property, and without any showing of any equity, and based on a mere arbitrary determination of a committee or a court, deprived the bond owners of their property without due process of law in violation of the constitutional provisions.

In view of the foregoing we submit that the order of the District Court was erroneous, the orders of the Circuit Court of Appeals were improper, and that the orders should be reversed, and a decision be rendered here on all questions presented by the petition.

Respectfully submitted,

MEYER ABRAMS,
MAX SHULMAN,
Attorneys for Appellants.

FILE COPY

IN THE

Supreme Court of the United States

October Term, A. D. 1935.

Nos. 375 and 376

NETTIE MEYER, ANNA JACOBSON, JACOB MEYERHOFF, JOSEPH MEYERHOFF, JULIUS MEYERHOFF, JOHN C. PANKIN and RAY MANN,

Appellants,

vs.

KENMORE GRANVILLE HOTEL COMPANY, *et al.*

Appellees.

On writ of certiorari to the Circuit Court of Appeals for the Seventh Circuit.

Motion of Appellants for Leave to Suggest an Additional Authority.

MEYER ABRAMS,
MAX SHULMAN,
134 N. LaSalle St.,
Chicago, Illinois,
Attorneys for Appellants.

HOMER LANDAU & CO., CHICAGO, ILLINOIS

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Appellants,

vs.

KENMORE GRANVILLE HOTEL COMPANY, *et al.*,

Appellees.

MOTION OF APPELLANTS FOR LEAVE TO SUGGEST AN ADDITIONAL AUTHORITY.

Now come appellants by Meyer Abrams and Max Shulman, their attorneys, and move for leave to supply an additional authority, in connection with the Reply Brief heretofore filed, under Points I, VI, and VII.

MEYER ABRAMS,
MAX SHULMAN,
Attorneys for Appellants.

SUGGESTIONS IN SUPPORT OF MOTION.

On the day when we forwarded appellants' Reply Brief to be filed in this Court the Circuit Court of Appeals for the Seventh Circuit rendered a decision *In re*: *Lowman; Lafayette Ins. Co.* v. *Lowman,* C. C. A. 7th C., Ind. Nov. 15, 1935. (This opinion is not yet officially reported, but it appears unofficially in the Bankruptcy Law Service published Nov. 19, 1935, par. 3680, page 1713). For the convenience of the Court we have reprinted the opinion in full as an Appendix to this Motion.

The same Circuit Court of Appeals, which held that the order denying the motion to dissolve the injunction was not appealable under 24(a), decided in this case that such an order is appealable, on the theory that the appellant was an adverse claimant asserting that there was no debtor nor creditor, which was the same theory upon which the appellants in this case sought the dissolution of the injunction.

The case is also authority for the proposition that Congress may not deprive vested rights of mortgagees under the pretense of bankruptcy legislation. We have urged in our Petition and in the Reply Brief the point that under the bond issue on the "Hotel" property the period of redemption had expired, and the Court was without jurisdiction to award to the junior interests or debtor any interest in the property, and that any action of this nature was contrary to the limitations of our Constitution. The case cited discusses these questions, and will greatly assist this Court in arriving at its conclusions.

Respectfully submitted,

MEYER ABRAMS,
MAX SHULMAN,
Attorneys for Appellants.

APPENDIX.

OPINION rendered by U. S. Circuit Court of Appeals for the Seventh Circuit on November 15, 1935, in the case of *In re*: *Lowman; Lafayette Ins. Co.* v. *Lowman,* Nov. 15, 1935, reported in Bankruptcy Law Service, par. 3680, page 1713, as follows:

SPARKS, C. J.—This is an appeal from an order of the District Court entered on February 25, 1935, overruling appellant's motion to dissolve an injunction entered on November 20, 1934. The injunction restrained the sheriff of Benton County, Indiana, until further order of the court, from issuing or delivering a deed pursuant to a certificate of sale executed on August 5, 1933, in a proceeding instituted by appellant on January 6, 1933, to foreclose its mortgage for $30,000 on certain premises owned by appellee. The latter filed her petition on July 23, 1934, for relief under the Frazier-Lemke Act providing for the composition and extension of her debts. When she filed her petition she was occupying the premises under a lease executed by the receiver appointed by the state court in connection with the foreclosure proceedings, and she complained in her petition that the lease was onerous and the rent excessive. The only specific prayer for relief contained in the petition was for an injunction against the sheriff to prevent him from issuing the deed. The petition was approved by the court as properly filed and referred to a conciliation commissioner on the day of the filing. Appellee annexed to her petition a schedule of debts containing two items, a contingent liability to appellant of $35,000, and a chattel mortgage to another party of $4,000. She also annexed an inventory of her property including the 320 acre farm covered by the mortgage in question, certain live stock and farm machinery. There nowhere appears in the

record any estimate of the value of any of this property, either real or personal. In a second petition filed subsequently, on July 30, 1934, appellee made the only suggestion of her proposed plan for rehabilitation in stating that she would do all in her power to secure a loan from the Farm Credit Administration of the Government of the United States for the purpose of making a composition as prayed for in her original petition. It does not appear that she had previously applied for a loan, nor that she subsequently made any specific proposal for a composition. In accordance with the prayer of her original and second petitions, the District Court on November 20, 1934, entered the restraining order, the effect of which was to prevent appellant from securing the deed to which it would otherwise have been entitled, under the laws of Indiana, upon its demand any time after August 5, 1934. [See par. 3133.] On November 26, appellant filed its motion to dissolve the injunction on the ground, among others, that since the petitioner's right of redemption had expired by law and terminated without a proposal of composition or extension, the court was without power to extend or revive her right of redemption. This motion was overruled on February 25, 1935.

The question of the right of this court to hear this appeal was raised after the hearing in this case, and the suggestion made that we are without jurisdiction for the reason that the appeal had been taken in the District Court only, and none prayed or allowed in this court, whereas the matter is one which is properly appealable only in the discretion of this court under section 24(b) of the Bankruptcy Act, 11 U. S. C. A. section 47(b). We do not agree with this contention. The order appealed from presented a substantial controversy between the debtor and her alleged principal creditor, who, however, denied that the relationship of debtor and creditor any longer existed between them, claim-

ing title to the principal asset said to belong to the estate, subject to a bare right of redemption which expired over three months prior to the entry of the order complained of. We think this presents a controversy arising in a bankruptcy proceeding, and as such is properly appealable under section 24(a) of the Bankruptcy Act, 11 U. S. C. A. section 47(a).

By the amendment to section 75 of the Bankruptcy Act enacted by Congress on August 28, 1935, it is expressly provided that where the period of redemption has not expired prior to the filing of a petition under section 75, that period shall be extended or the confirmation of sale withheld for the period necessary for the purpose of carrying out the provisions of this section.[1]

The amended Act also provides that it is to be held to apply to all existing cases now pending in any Federal court, as well as to future cases, and that all cases that have been dismissed by any conciliation commissioner, referee, or court because of the Supreme Court decision holding the former subsection (s) unconstitutional, shall be promptly reinstated, without any additional filing fees or charges.

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[1] "(n) The filing of a petition or answer with the clerk of court, or leaving it with the conciliation commissioner for the purpose of forwarding same to the clerk of court, praying for relief under section 75 of this Act, as amended, shall immediately subject the farmer and all his property, wherever located, for all the purposes of this section, to the exclusive jurisdiction of the court, including all real or personal property, or any equity or right in any such property, including, among others, contracts for purchase, contracts for deed, or conditional sales contracts, the right or the equity of redemption where the period of redemption has not or had not expired, or where a deed of trust has been given as security, or where the sale has not or had not been confirmed, or where deed had not been delivered, at the time of filing the petition.

"In all cases where, at the time of filing the petition, the period of redemption has not or had not expired, or where the right under a deed of trust has not or had not become absolute, or where the sale has not or had not been confirmed, or where deed had not been delivered, the period of redemption shall be extended or the confirmation of sale withheld for the period necessary for the purpose of carrying out the provisions of this section. * * *"

It will be seen that these provisions expressly cover the situation involved in this case, so that, if valid, they operate to validate the injunction here complained of. The question then is, has Congress the power, under Article 1, section 8, clause 4, of the Constitution, to confer upon courts of bankruptcy jurisdiction over property where foreclosure proceedings have been had in the state courts, and where, but for the extension of the period of redemption by virtue of this enactment, the owner would have lost all right to redeem by failure to exercise that right within the period provided by state statute.

At the outset it should be observed that in section 75 of the Bankruptcy Act, Congress has extended the jurisdiction of the courts of bankruptcy much further than in section 74. The latter provides that the filing of the debtor's petition shall subject him and his property to the exclusive jurisdiction of the court including property in the custody of another court in connection with pending proceedings irrespective of the date of the institution of such proceedings, provided that it shall not affect any proceedings in any court in which a final decree has been entered. This court decided, in the *Matter of Sorenson,* 77 F. (2d). 166 (certiorari denied October 14, 1935) that a decree of foreclosure constituted such final decree, and that it adjudicated, as between the parties to the litigation, all issues relating to their mutual rights and obligations. Under the laws of Indiana, upon a sale under such decree, the sheriff is authorized to issue to the purchaser a certificate of purchase which "shall entitle the purchaser * * * or assigns to a conveyance of the estate in said real property bought by such purchaser, at the expiration of one year from the date of his purchase unless the same shall have been previously redeemed as hereinafter provided." Burns Indiana Statutes Annotated, 1933, 2-3909.

It was held in *Hubble* v. *Berry,* 180 Ind. 513, that: "A sheriffs' certificate * * * after the expiration of the year for redemption, invests the holder with an equitable estate in the land, of such high character that it only requires his demand for a deed, to ripen it into an absolute legal title. * * * 'At the expiration of one year from the date of sale, the property not having been previously redeemed, the right and title of the holders of the certificate to a deed * * * became absolute under the statute, and so continued until such deed was demanded and executed.' " This means, then, that the Indiana statute confers upon the purchaser, whether he be the mortgagee or a third party, the absolute right to a conveyance upon demand at the end of the year, unless the mortgagor shall have exercised his right to redeem the property within the period allotted to him for that purpose. Congress, by the amendment of August, 1935, has attempted to extinguish this right by providing that when the conditions set forth in the amended sub-section (s) have been complied with, the court shall stay all judicial or official proceedings in any court, or under the direction of any official, against the debtor or any of his property for a period of three years, at the end of which time, or prior thereto, the debtor may pay into court the amount of an appraisal as made under the direction of the court at the beginning of the three year period, or, if either debtor or any secured or unsecured creditor has requested it, of a reappraisal at the time payment is to be made by the debtor. The only provision by which it is attempted to save the rights of the secured creditor against the property itself in which he has his security lies in sub-section (3): "* * * Provided that upon request in writing by any secured creditor or creditors, the court shall order the property upon which such secured creditors have a lien to be sold at public auction. * * *" Presumably it is intended by this section to enable the secured creditor to bid in the

property at the amount of his mortgage, thereby permitting him to obtain the property or the full amount of the debt, if the debtor chooses to redeem within the ninety days thereafter also provided for by the statute. Thus at the end of three years and ninety days the mortgagee may receive exactly what he was entitled to under the completed adjudication according to the laws of the state at the beginning of that period.

We think that in thus extending or tolling the period of redemption for three years beyond that fixed by state statutes, Congress exceeded the powers conferred upon it under the bankruptcy clause of the Constitution. We think that that clause does not give to Congress the right to alter the relative rights between the parties which have already been fixed by a final adjudication in a state court according to rules laid down in the state statute. "Statutes providing for redemption from judicial sales constitute a rule of property in their respective states, and are binding upon the courts of chancery as well as law, and will be given effect in the federal courts." *American Mine Equipment Co.* v. *Illinois Coal Corp.*, 31 F. (2d) 507. We think Congress has no right to change such rules of property after the right of the parties have become vested in accordance with them.

Appellee relies upon *Home Bldg. and Loan Assn.* v. *Blaisdell,* 290 U. S. 398, as conclusively settling the constitutionality of section 75. She urges that since Congress under its bankruptcy powers has greater powers than the states, it follows that if a state law extending the period of redemption under certain conditions is valid, an Act of Congress doing the same thing must necessarily be valid. We do not agree with this reasoning. It is true that Congress is not bound by the same constitutional limitation on the impairment of contracts which under ordinary circumstances prevents a state from enforcing such a statute as

was upheld by the Supreme Court in the *Blaisdell* case. However, it does not follow that Congress has the power under the bankruptcy clause to alter rules of property previously established by state statute and according to which the rights of parties have become fixed. The Court in the *Blaisdell* case held that the facts there existing furnished a proper occasion for the exercise of the reserved power of the State to protect the vital interests of the community, even though in so doing it was necessary to suspend accrued rights for a limited period, under provisions reasonably calculated to safeguard those rights. This was in no sense the exercise of bankruptcy power, for states have no such power. It was rather in the nature of the police power which states alone may exercise, and which the United States has never had. *Hamilton* v. *Kentucky Distilleries Co.*, 251 U. S. 146; *In re Rahrer*, 140 U. S. 545. Therefore, if the federal statute here in question can not be upheld under the bankruptcy power, it is invalid.

We think there is nothing in the constitutional clause conferring upon Congress the control over bankruptcy which authorizes it to change property rights already created by the states. Under the proper exercise of that power, federal courts may be authorized to assume jurisdiction over and to administer property of bankrupts, but they must administer that property as they find it, and they have no power to create new rights in it for the benefit of either debtor or creditor. See *In re Goldman*, 102 Fed. 122. They must look to local law to determine the efficiency of acts and transactions to effect the transfer of title to property and also the time of the passing of title, the validity of mortgages and other liens. See Remington on Bankruptcy (Third Edition), sections 1405 and 1406 and cases there cited. In *Chicago Board of Trade* v. *Johnson*, 264 U. S. 1, the Court said: "* * * Of course, where the bankrupt law deals with property rights which are regulated

by the state law, the federal courts in bankruptcy will follow the state courts; * * *'' It might equally well be said that where property rights are regulated by the state law, Congress has no right under the bankruptcy power to alter those rights. We think that the fixing of a specific period for redemption of property following foreclosure constitutes such a state regulation of property rights as to bar Congress from altering it. In *Home Bldg. and Loan Assn.* v. *Blaisdell, supra*, the Court said: ''* * * Although the courts would have no authority to alter a statutory period of redemption, the (Minnesota) legislation in question permits the courts to extend that period, within limits and upon equitable terms, * * *'' Here, however, since the legislation purporting to authorize the courts to extend the period was beyond the scope of the power of Congress to pass, that legislation is ineffectual to accomplish its purpose, even though its provisions are very similar to those of the legislation approved by the Supreme Court in the *Blaisdell* case as properly enacted by the Minnesota legislature.

The federal courts, therefore, are still without authority to extend the period of redemption in behalf of debtors petitioning under section 75.

The *amicus curiae* in this case has cited the opinion of this court *In re Argyle-Lake Shore Bldg. Corp.*, 78 F. (2d) 491, as authority for a contrary holding. That case, however, involved a statute quite different in its terms from the one here under consideration. The Illinois statute on Revenue provides for the sale of property on which there are delinquent taxes, and further provides that real property so sold may be redeemed within two years after such sale, or after the expiration of two years at any time up to the date a tax deed is issued. Smith-Hurd Illinois Revised Statutes, 1935, chap. 120, section 196. In that case, a taxpayer petitioned, prior to the issuance of a tax deed, to

reorganize under section 77B, and in pursuance to its plan of reorganization sought an injunction to prevent the issuance of the deed. We held that, under the provisions of that statute, the corporation's right of redemption had not expired, and that the court had properly enjoined the issuance of the deed. In the statute involved in the case at bar, however, there is no such provision for redemption after the expiration of the one-year period. On the contrary, it has been specifically held by the Indiana court that the period expires at midnight of the last day of that year. *Jessup* v. *Carey*, 61 Ind. 584.

We therefore hold that the action of the District Court in overruling appellant's motion to dissolve the injunction was erroneous and the order is hereby reversed and the cause remanded with instructions to dissolve the injunction and for further proceedings not inconsistent with this opinion.

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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, A. D. 1935

No. 375-376

NETTIE MEYER, ANNA JACOBSON, JACOB MEYERHOFF, JOSEPH MEYERHOFF, JULIUS MEYERHOFF, JOHN C. PANKIN and RAY MANN,

Petitioners,

vs.

KENMORE-GRANVILLE HOTEL COMPANY, et al.,

Respondents.

BRIEF OF RESPONDENTS IN OPPOSITION TO THE PETITION FOR WRIT OF CERTIORARI.

I. E. FERGUSON,
ARTHUR M. COX,
Attorneys for Respondents.

CLAUDE A. ROTH,
HARRY E. SMOOT,
IRVING H. FLAMM,
MAX FREDERICK GOLDBERG,
Of Counsel.

CHICAGO LAW PRINTING CO., 111 NORTH WACKER DRIVE (COR. WASHINGTON ST.)

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CHRONOLOGY

Oct. 27, 1932—Kenmore-Granville Hotel Corporation, Debtor, acquired title of property in question (R. 50).

Feb. 4, 1935—Creditors' petition filed in District Court (R. 2).

Feb. 8, 1935—Complaint of Nettie Meyer filed in Superior Court of Cook County, Illinois (R. 160).

Feb. 13, 1935—Order of District Court approving creditors' petition (R. 36).

Feb. 25, 1935—Petition of Nettie Meyer to dismiss filed in District Court (R. 37).

Feb. 27, 1935—Order of District Court giving Committees leave to file plan (R. 131).

Mar. 20, 1935—Order of District Court denying Nettie Meyer's petition to dismiss and allowing her appeal therefrom (R. 93, 96).

Apr. 20, 1935—Objections of petitioners (except Nettie Meyer) to plan filed (R. 141).

Apr. 27, 1935—Proposed amendment to plan submitted by petitioners (other than Nettie Meyer) filed (R. 144).

May 20, 1935—Order of District Court approving plan of reorganization (R. 145); also order allowing Nettie Meyer's petition to appeal (R. 168).

May 28, 1935—Order of Circuit Court of Appeals dismissing appeal allowed by District Court March 20, 1935 (R. 105).

June 7, 1935—Petition of Nettie Meyer to Circuit Court of Appeals to allow appeal from order of May 20, 1935 (R. 172).

June 25, 1935—Order of Circuit Court of Appeals denying Nettie Meyer's petition for leave to appeal from order of May 20th (R. 177).

June 28, 1935—Motion of petitioners in Circuit Court of Appeals to consolidate causes, etc. (R. 178).

July 9, 1935—Order of Circuit Court of Appeals dismissing Nettie Meyer's appeal allowed by District Court May 20, 1935 (R. 182).

July 9, 1935—Order of Circuit Court of Appeals denying motion of June 28, 1935 to consolidate, etc. (R. 105).

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, A. D. 1935

Nos. 375-376

NETTIE MEYER, ANNA JACOBSON, JACOB MEYERHOFF, JOSEPH MEYERHOFF, JULIUS MEYERHOFF, JOHN C. PANKIN and RAY MANN,

Petitioners,

vs.

KENMORE-GRANVILLE HOTEL COMPANY, et al.

Respondents.

BRIEF OF RESPONDENTS IN OPPOSITION TO THE PETITION FOR WRIT OF CERTIORARI.

To the Honorable, the Chief Justice and the Associate Justices of the Supreme Court of the United States:

Respondents, Kenmore-Granville Hotel Company, the debtor, J. Gold, R. Sandroff and S. Isenberg, petitioning creditors, and George W. Rossetter, Jay C. McCord and Sidney H. Kahn, members of the Sovereign and Sovereign

Annex First Mortgage Bondholders' Committees, respectfully submit their brief in opposition to the petition of Nettie Meyer, Anna Jacobson, Jacob Meyerhoff, Joseph Meyerhoff, Julius Meyerhoff, John C. Pankin and Ray Mann for a writ of certiorari.

STATEMENT OF THE CASE.

Introduction.

Running throughout the entire petition for a writ of certiorari is the contention that petitioner Nettie Meyer, the owner of $1300 of the more than $1,500,000 of outstanding bonds has been deprived of the right to prosecute her charges of fraud in the state court, by restraining orders entered in the District Court. This contention of the petitioners is wholly without merit for the reason that the judge of the District Court in dismissing Nettie Meyer's petition stated that he would not destroy any cause of action of any bondholder or group of bondholders against the trustees under the mortgages or against the bondholders' committee (R. 91); furthermore, in approving the plan of reorganization the District Court provided that any cause of action in the debtor or in any person, firm or corporation, for or in behalf of the debtor, should be preserved and passed on to the new or reorganized corporation (R. 154 and 164).

The petitioners contend and argue that 77B of the Bankruptcy Act as amended is invalid. However, the constitutionality of that section was not questioned in the District Court either in the petition of Nettie Meyer to dismiss the proceedings (R. 37) or in the objections of the other

petitioners filed to the plan of reorganization (R. 141) or otherwise. Therefore, petitioners are not in a position to ask this court to pass on the constitutionality of that section.

Petitioners contend that the Circuit Court of Appeals has held, in effect, that no appeal lies from an order confirming a plan of reorganization either by appeal from the District Court or by petition in the Circuit Court of Appeals to superintend and revise. The fact is the Circuit Court of Appeals followed *Campbell* v. *Alleghany Corporation,* 75 F. (2d) 947 and held that such an order may be reviewed by petition to that court to superintend and revise.

Since the District Court preserved the rights of the petitioner Nettie Meyer with respect to her suit in the state court, we deem it unnecessary to answer here the charges of fraud made in that court, except to say there is not a word of evidence in this case to support them.

STATEMENT OF THE FACTS.

The statement of the case set forth in the petition for writ of certiorari is inaccurate and insufficient in the following respects:

1. On page 2 of the petition it is stated:

"The new corporation did not assume the debts and was never in possession."

Kenmore-Granville Hotel Company, the debtor, which acquired the property in 1932 (R. 50), has expressly assumed the payment of the Sovereign and the Sovereign Annex first mortgage bonds (R. 77 and 160).

2. Petitioners, on page 2 of their petition, state that Nettie Meyer filed her complaint in the state court prior

to the approval of the creditors' petition in the District Court, thereby seeking to create the impression that the state court proceedings were instituted prior to those in the District Court. The creditors' petition for proceedings under section 77B of the Bankruptcy Act (11 U. S. C. A. §207) were filed February 4, 1935, while Nettie Meyer's complaint was filed in the state court four days thereafter, on February 8, 1935.

3. On page 3 of the petition for the writ it is stated that Nettie Meyer's petition in the District Court charges that S. W. Straus & Co., the house of issue, organized a bondholders' committee consisting of its officers. It omits to tell the court that two of the three members of the bondholders' committees who proposed the plan of reorganization to the District Court are George W. Rossetter and Jay C. McCord (R. 65), who are not and never were in any manner directly or indirectly associated with S. W. Straus & Co. or any of its affiliated companies (R. 161).

Subsequent to the approval of the creditors' petition as having been filed in good faith and the denial of Nettie Meyer's petition to dismiss the proceedings and to dissolve the restraining order previously entered, the District Court approved a plan of reorganization which provided *inter alia* as follows:

> 1. That a new corporation be organized with an issue of common stock to take over the assets of the debtor including The Sovereign and The Sovereign Annex properties;
>
> 2. That 90% of the stock of the new corporation be distributed among the holders of the two issues of first mortgage bonds upon the property (R. 124);
>
> 3. That 7½% of the stock of the new corporation be issued to S. W. Assets Liquidation Corporation in payment of subordinated and unsubordinated advances

made by S. W. Straus & Co. amounting to approximately $322,441.25 (R. 125);

4. That 2½% of the common stock of the new corporation be issued to Nomis-Suarts Corporation, the holder of all of the capital stock of the debtor and an unsecured creditor in the amount of approximately $73,371.45 (R. 125);

5. That a voting trust of the stock be created, unless a majority in amount of the stock vote against it in a referendum to be held for that purpose (R. 124);

6. That two of the three trustees of the voting trust be appointed by the court, the third by the bondholders committees subject to the approval of the court;

7. That all stockholders shall be at liberty at any time to withdraw their stock from the voting trust.

Opinion of Circuit Court of Appeals

The Circuit Court of Appeals rendered and filed a memorandum opinion on June 25, 1935, in connection with the denial of leave to appeal from the District Court order of May 20, 1935, which opinion is attached to this brief as "Appendix," an order entered by it on that day which is attached to this brief as "Appendix."

ARGUMENT.

(For the convenience of the Court, a chronology of pertinent events appears opposite page 1.)

Circuit Court of Appeals Orders Involved.

Petitioners Nettie Meyer, Anna Jacobson, Jacob Meyerhoff, Joseph Meyerhoff, Julius Meyerhoff, John C. Pankin and Ray Mann pray the issuance of a writ of certiorari to review the following decisions of the United States Circuit Court of Appeals for the Seventh Circuit, in two cases before that court, Nos. 5491 and 5531. (Petition for Writ, p. 1):

(1) Order of May 28, 1935 in case No. 5491, sustaining the motion of appellees to dismiss, and dismissing the appeal of *Nettie Meyer* prayed in and allowed by the United States District Court from an order of March 20, 1935 of that court (R. 105).

(2) Order of July 9, 1935 in case No. 5531, dismissing the appeal granted to "*Nettie Meyer, et al.,*" by the District Court of the United States from an order of that court of May 20, 1935 approving a plan of reorganization (R. 182).

(3) Order denying "prayer of the petition to appeal" to the Circuit Court of Appeals (Petition for Writ, p. 1).

Petitioners further state that they seek "a review of the whole case and to settle the practice in connection with appeals under 77B as well as the constitutionality of the whole act" (Petition for Writ, p. 9).

Circuit Court order of May 28, 1935, in case no. 5491.

This order of the Circuit Court of Appeals sustained the motion of appellees to dismiss and it dismissed the appeal of Nettie Meyer allowed by the District Court from an order of that court of March 20, 1935 (R. 105). The petition for this appeal in the District Court was made by only one of the seven petitioners here, namely, Nettie Meyer. The order appealed from denied the prayer of Nettie Meyer's petition "to dissolve the injunction and to dismiss the proceedings for lack of jurisdiction and for good faith" (R. 93). On February 13, 1935, the District Court had entered an order approving the creditors' petition as properly filed under Section 77B of the Bankruptcy Act, as amended, and restraining all creditors of the debtor from commencing or prosecuting any action against the debtor for the purpose of enforcing any lien or claim upon the property of the debtor or interfering with or disturbing the operation of the property of the debtor and from taking possession thereof until the further order of the court (R. 36).

The petition of Nettie Meyer to dismiss the creditors' petition for reorganization under Section 77B of the Bankruptcy Act and the order refusing to dismiss it, present "proceedings in bankruptcy," appealable only under Section 24(b) of the Bankruptcy Act (11 U. S. C. A. §47(b)) by application to the Circuit Court of Appeals. (*Credit Alliance Corp.* v. *Atlantic, Pacific & Gulf R. Co.*, (C. C. A., 8th Cir.), 77 F. (2d) 595, 597).

The restraining part of that order of February 13, 1935, enjoining creditors from prosecuting proceedings against the debtor or its property, which Nettie Meyer sought to dissolve, was also a step in the bankruptcy proceedings, appealable only by application to the Circuit Court of

Appeals. In *Credit Alliance Corp.* v. *Atlantic Pacific & Gulf R. Co.*, 77 F. (2d) 595 (C. C. A. 8th Cir.) the court said, at page 597:

> "The order enjoining the creditor, Credit Alliance Corporation from commencing or prosecuting any further action or actions to enforce its lien until the further order of the court was also a step in the bankruptcy proceeding, a 'proceeding in bankruptcy' not assuming to adjudicate upon any adverse claim to the property or presenting a 'controversy.' Such order also was appealable only under Section 24b."

(See also *Vitagraph, Inc.* v. *St. Louis Properties Corporation*, 77 F. (2d) 590 (C. C. A. 8th Cir.) and *St. Louis Can Co.* v. *General American Life Ins. Co., et al.*, 77 F. (2d) 598 (C. C. A. 8th Cir.).

Much of petitioners' brief is devoted to the proposition that the District Court in these proceedings has improperly interfered with the jurisdiction of the Superior Court of Cook County over the *res*. The Superior Court of Cook County never had possession of the property. At the time these proceedings were instituted the property was in the possession of Robert M. Sweitzer, County Treasurer, as receiver under the so-called "Skarda Act" (R. 159) in proceedings in the Circuit Court of Cook County, case No. 34-C-13891 (R. 36). The order of the District Court which approved the creditors' petition as having been filed in good faith continued the County Treasurer in possession of the property until the further order of that court (R. 36). The County Treasurer, as receiver, has not questioned the jurisdiction of the District Court over this property. Nettie Meyer is a creditor as a bondholder and has no adverse interest in the property.

Had Nettie Meyer perfected a proper appeal from the order of March 20, 1935, refusing to dismiss the proceed-

ings and to dissolve the injunction, she could not have raised therein any question as to the constitutionality of Section 77B for the reason that, as stated above, she raised no such question below. Even so, we submit that the question of constitutionality has been disposed of (*Continental Ill. Nat. B. Co.* v. *C. R. I. & P. Co.*, 294 U. S. .....; 79 L. ed. 642). We believe that what this court said in that case with respect to the validity of section 77 of the Bankruptcy Act as amended fully applies to section 77B.

Order of July 9, 1935 on appeal allowed by District Court.

This order entered in case No. 5531 (R. 182) dismissed the appeal granted to "Nettie Meyer, *et al.*," by the District Court from an order of that court of May 20, 1935 approving a plan of reorganization. The petition to the District Court for this appeal was made by "Nettie Meyer, in her own behalf and on behalf of other objectors represented by Shulman, Shulman & Abrams" and was signed "Nettie Meyer, Petitioner" (R. 166). The order of the District Court of May 20, 1935 appealed from, passed upon claims of creditors, approved (with modifications) the amended plan of reorganization, directed the further steps to be taken in consummating the reorganization, set the case for hearing on applications for fees, enjoined the holders of trust certificates (in the event a trust was created under the plan of reorganization) from commencing and prosecuting proceedings against the debtor, the new corporation, or any property either of the debtor or the new corporation and against the trustees, without the consent of court after notice to all parties; and enjoined the holders of bonds and coupons from commencing or prosecuting proceedings against the debtor, its successors or against the property of the debtor or the new corporation on such bonds or coupons (R. 157).

The Circuit Court of Appeals dismissed this appeal from this order of the District Court of May 20, 1935 on the ground that the order could properly be reviewed only on appeal allowed by the Circuit Court of Appeals, following *Campbell* v. *Alleghany Corporation*, 75 F. (2d) 947 (C. C. A. 4th Cir.), in which case there was a like holding. In this case Circuit Judge Parker said (p. 955):

> "For the reasons stated, we think that section 77B of the Bankruptcy Act is a constitutional and valid enactment, and that there was such acceptance by the bondholders of the plan of reorganization as warranted the court below in entering the order from which appeal was taken. As subdivision (k) of section 77B (11 U. S. C. A. §207 (k) provides that proceedings under that section shall be deemed 'bankruptcy proceedings' or 'proceedings in bankruptcy' and shall be governed by the provisions of the general bankruptcy act when same are not inconsistent with the provisions of the section, and as proceedings in bankruptcy, except in the three cases mentioned in section 25, as amended, 11 U. S. C. A. §48, are reviewable only by appeal to superintend and revise under section 24b, as amended, 11 U. S. C. A. §47 (b), it follows that the proper method of reviewing the order below was by appeal to superintend and revise under section 24b."

An additional reason for denying this appeal was that the person making it had no right to appeal. Nettie Meyer filed no claim, no objections to the plan of reorganization which was approved by the order of May 20, 1935, and did not join in the alternative plan proposed by certain creditors (R. 144) and did not participate in the District Court proceedings after the entry of the order of March 20, 1935 approving the creditors' petition (ex-

cept to present her various petitions for appeal). Accordingly, she had laid no foundation for an appeal from the order of May 20, 1935. "The other objectors" mentioned in Nettie Meyer's petition to appeal from the order of May 20, 1935 (R. 166) had no right to appeal from it as they did not join in the appeal. As said by the Circuit Court of Appeals in their memorandum opinion of June 25, 1935, if these "other objectors" desired to appeal they should have spoken for themselves (Appendix). The appeal bond filed and approved was that of Nettie Meyer alone (R. 166 and 96).

If Nettie Meyer had no right to appeal from the order of May 20, 1935 confirming the plan, it is not important whether the appeal prayed in the District Court was based on Section 24a of the Bankruptcy Act as involving a controversy or on Section 25 (11 U. S. C. A. §48) as involving a judgment granting a discharge. The order confirming the plan was not tantamount to a discharge in bankruptcy as is contended by the petitioners. Section 77B of the Bankruptcy Act, subdivision (h) provides:

> "Upon the termination of the proceedings a final decree shall be entered discharging the trustee or trustees, if any, making such provisions as may be equitable, by way of injunction or otherwise, and closing the case. Such final decree shall discharge the debtor from its debts and liabilities, and shall terminate and end all rights and interests of its stockholders, except as provided in the plan or as may be reserved as aforesaid."

The order confirming the plan of reorganization is not the final decree "closing the case."

Order denying petition to Circuit Court of Appeals to appeal.

Petitioners state that "the second appeal" was dismissed by the Circuit Court of Appeals on July 9, 1935 and "at the same time" the court denied "the prayer of the petition for leave to appeal" (Petition for Writ, p. 1). Petitioners make substantially the same statement in their brief in support of the petition (p. 9).

Petitioners seek to persuade the court that by an order entered July 9, 1935 (R. 105) the Circuit Court of Appeals denied their petition for leave to appeal from the order of May 20, 1935 confirming the plan. That order (R. 105, second order) was entered on the motion of the petitioners, supported by petition, (1) to consolidate cases No. 5491 and No. 5531, (2) to vacate the order (entered June 25, 1935) denying the application of Nettie Meyer for leave to appeal and to permit an amendment thereto, and (3) "to enter all orders in the consolidated causes, dismissing the appeals and *denying the application for leave to appeal* and to stay the mandate" (R. 179). The order entered July 9, 1935, overruled this motion and denied the petition presented in support of it (R. 105).

But it is important for the court to note that the Circuit Court of Appeals had prior to July 9, 1935, that is, on June 25, 1935, passed on a motion of Nettie Meyer (supported by petition) for leave to appeal from that order of May 20, 1935 (R. 171). The court denied this motion (R. 177) and rendered an opinion setting forth the court's reasons for so doing, as follows: (1) that Nettie Meyer made no objection to the plan in the District Court and submitted no alternative and therefore could not appeal; (2) that Nettie Meyer could not appeal on behalf of the others whom she pretended to represent—that if others desired to appeal from that order they should "speak for themselves" and (3) that Nettie Meyer

holding $1300 of bonds out of a total amount of over $1,000,000 of bonds, 95% of which had agreed to the plan, should not be permitted to delay the settlement of the estate (Appendix).

This motion of Nettie Meyer (and petition) was the only application made to the Circuit Court of Appeals for appeal from the order of May 20, 1935; and the order of June 25, 1935 was the only order of that court denying an application for such appeal. *No review of that order is sought here.* The court by its order of July 9, 1935 (R. 105), in effect, refused to re-enter in the consolidated cause the orders previously entered in the separate cases.

The petitioners apparently realized that the order of the Circuit Court of Appeals of June 25, 1935, denying the motion of Nettie Meyer for leave to appeal was sound; and they knew that, 35 days having elapsed, it was too late to file a new petition in the names of the other petitioners here. What the petitioners were unable to do directly, they sought to do indirectly by attempting to amend their petition filed June 7, 1935, to include "objectors" to the plan, but such amendment came too late.

In view of the fact that Nettie Meyer had no right to appeal from the order approving the plan and the other petitioners here did not join in any such appeal, it seems unnecessary to discuss the contention of petitioners that the plan was inequitable in that it allowed a 10% interest in the stock of the new corporation to certain junior interests. However, the record shows that this allowance was based on an advance of $396,900 to meet interest and principal prepayments on The Sovereign and The Sovereign Annex bonds (R. 160); that 7½% of the stock would be issued to S. W. Assets Liquidation Corporation, but that no one ever connected with S. W. Straus & Co. had any interest in that corporation; that 2½% of the stock would be issued to Nomis-Suarts Corporation (R. 160).

CONCLUSION.

Petitioners have attempted, without the order of this court, to consolidate the two cases Nos. 375 and 376. They have filed one transcript and one petition for a writ of certiorari in these cases. All that respondents have before them are the transcript and the petition for the writ. It is impossible to tell from these which case is numbered 375 and which one is numbered 376. The two cases involve different subject matter and different parties. Petitioners Anna Jacobson, Jacob Meyerhoff, Joseph Meyerhoff, Julius Meyerhoff, John C. Pankin and Ray Mann have no interest in the appeal from the order of March 20, 1935, involved in one case. The petitioner Nettie Meyer has no interest in the appeal from the order entered May 20, 1935, involved in the other case. The two appeals, though presented by the same counsel, are inconsistent and cannot be consolidated. While Nettie Meyer challenges the jurisdiction of the District Court, the other petitioners recognize and invoke it by proposing an amendment to the plan and participating in the hearing thereon.

The petitioners' brief contains no specification of the assigned errors intended to be urged, as required by Rule 27 of this court.

The Circuit Court of Appeals has not held as contended that there was no right to appeal either from the order of March 20, 1935 approving the creditors' petition, or the order of May 20, 1935 confirming the plan of reorganization. The court merely held that no proper appeal was taken from either order.

The petitioners' petition and brief disclose no special or important reason why this court should grant a review of the orders of the Circuit Court of Appeals. It is not shown that any of the orders of the Circuit Court of Appeals complained of is in conflict with the decision of any other Circuit Court of Appeals or that the court has decided any important question of general law in a way that is untenable or in conflict with the weight of authority.

We respectfully submit that the petition for a writ of certiorari should be denied.

I. E. Ferguson,
Arthur M. Cox,
Attorneys for Respondents.

Claude A. Roth,
Harry E. Smoot,
Irving H. Flamm,
Max Frederick Goldberg,
Of Counsel.

Appendix.

IN THE

UNITED STATES CIRCUIT COURT OF APPEALS

FOR THE SEVENTH CIRCUIT

Tuesday, June 25, 1935

Court met pursuant to adjournment and was opened by proclamation.

Before:

Hon. Evan A. Evans, Circuit Judge
Hon. William M. Sparks, Circuit Judge

In the Matter of KENMORE-GRANVILLE HOTEL COMPANY, A Corporation, Debtor;

NETTIE MEYER, et al.

5531 *vs.*

KENMORE-GRANVILLE HOTEL COMPANY, A Corporation, et al.

Appeal from the District Court of the United States for the Northern District of Illinois, Eastern Division.

Appellant, Nettie Meyer, has filed a petition wherein she requests this court to allow her to appeal from an order of the District Court entered on May 20, approving a plan of reorganization. The District Court allowed an appeal to be taken from the same order.

In a companion case this court dismissed an appeal allowed by the District Court from another order entered on March 20 by the District Court.

In disposing of this petition, we believe it advisable to set forth our views in writing so there may be no misunderstanding as to its significance.

Should this court in its discretion allow the appeal from an order of May 20 approving the plan of reorganization?

It would seem that the order can only properly be reviewed on appeal allowed by this court. See *Campbell* v. *Allegheny Corporation*, 75 F. (2d) 947. A reading of the petition discloses a somewhat anomalous situation. The petitioner is Nettie Meyer. She made no objection to the plan in the District Court and submitted no alternative. In her petition for leave to appeal she says that she filed it on her behalf and on behalf of objectors represented by Shulman, Shulman & Adams, who join in this petition. Only Nettie Meyer signed the petition, and therefore we assume that she is the only one who joined in the petition. The interest of the petitioner is perhaps $1300, whereas the total amount of the bonds is over one million. Ninety-five percent of the holders though had agreed to the plan. It is significant that the petitioner did not object to the plan, nor was one in opposition thereto or which was proposed as a more equitable plan, offered. She is delaying the settlement of this estate when ninety-five percent. of the outstanding bondholders want the plan carried out. It may be asserted that some other parties, who had objected to the plan in the District Court and the aggregate of whose claims amounted to approximately $9,000, support petitioner's request. Reference is made to one Anna Jacobson. If she was an objector, why did she not sign the petition?

Petitioner has no right to object to the order on her own account. She seeks to strengthen that right, however, by asserting her petition is drawn for others. The answer to this contention is,—let the others speak for themselves.

The petition for leave to appeal is denied, and a motion to dismiss the appeal allowed by the District Court will be entertained as being one from which the District Court may not allow an appeal.

UNITED STATES CIRCUIT COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

I, Frederick G. Campbell, Clerk of the United States Circuit Court of Appeals for the Seventh Circuit, do hereby certify that the foregoing typewritten pages, numbered from 1 to 2, inclusive, contain a true copy of the memorandum by the Court, filed on the twenty-fifth day of June, 1935, in the case of *In the Matter of Kenmore-Granville Hotel Company Debtor; Nettie Meyer, et al., Appellants* v. *Kenmore-Granville Hotel Company, a Corporation, et al., Appellees* No. 5531, October Term, 1934, as the same remains upon the files and records of the United States Circuit Court of Appeals for the Seventh Circuit.

In Testimony Whereof I hereunto subscribe my name and affix the seal of said United States Circuit Court of Appeals for the Seventh Circuit, at the City of Chicago, this 4th day of September, A. D. 1935.

Frederick G. Campbell,
Clerk of the United States Circuit Court of Appeals for the Seventh Circuit.

(Seal)

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1935.

Nos. 375 and 376

Nettie Meyer, Anna Jacobson, Jacob Meyerhoff, Joseph Meyerhoff, Julius Meyerhoff, John C. Pankin and Rae Mann,

appellants,

vs.

Kenmore-Granville Hotel Company, the debtor corporation; J. Gold, R. Sandroff and S. Isenberg, petitioning creditors; George W. Rossetter, Jay C. McCord and Sidney H. Kahn, members of the Sovereign and Sovereign Annex first mortgage bondholders committees,

appellees.

On writ of certiorari to the circuit court of appeals for the seventh circuit.

BRIEF FOR APPELLEES.

IRVING H. FLAMM, for petitioning creditors;
MAX FREDERICK GOLDBERG, for debtor corporation;
CLAUDE A. ROTH, BERNARD NATH, ARTHUR M. COX, for bondholders committees;
all of Chicago, Illinois,
attorneys for appellees.

ISAAC E. FERGUSON,
CLAUDE A. ROTH,
HARRY E. SMOOT,
all of Chicago, Illinois,
of counsel.

THE GUNTHORP-WARREN PRINTING COMPANY, 310 WEST JACKSON, CHICAGO

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1935.

Nos. 375-376.

Nettie Meyer, Anna Jacobson, Jacob Meyerhoff, Joseph Meyerhoff, Julius Meyerhoff, John C. Pankin and Rae Mann,

appellants,

vs.

Kenmore-Granville Hotel Company, the debtor corporation; J. Gold, R. Sandroff and S. Isenberg, petitioning creditors; George W. Rossetter, Jay C. McCord and Sidney H. Kahn, members of the Sovereign and Sovereign Annex first mortgage bondholders committees,

appellees.

BRIEF FOR APPELLEES.

Statement of the case.

Grant of certiorari:

October 14, 1935, certiorari was granted in nos. 375 and 376, under a single order. The only specification in the order granting the certiorari is the following: "Assigned for argument immediately following no. 157."*

A single petition for certiorari was filed in nos. 375 and 376. The petitioners have elected to let this petition stand as their brief on the appeals.

Case, no. 375:

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* *St. Louis Can Co.* v. *General American Life Insurance Co.* (C. C. A. 8), 77 F. (2d) 598; certiorari granted same day.

Case no. 375 relates to case no. 5491 of the circuit court of appeals (7th circuit), wherein the latter court dismissed the appeal taken by Nettie Meyer without prior leave of said court. (R. 104-105.)

Case no. 376 relates to case no. 5531 of the circuit court of appeals. In this case the latter court entered two orders: (1) dismissing appeal taken by Nettie Meyer on leave of the district court (R. 182); (2) denying petition of Nettie Meyer for leave to appeal (R. 177-178; memorandum opinion, pp. 16-18 of respondents' brief in opposition to petition for certiorari.)

PROCEEDINGS IN DISTRICT COURT LEADING UP TO CASE NO. 5491 OF CIRCUIT COURT OF APPEALS, CASE NO. 375 OF THIS COURT.

District court order of February 13, 1935:

February 4, 1935, an involuntary petition was filed in the district court for reorganization of Kenmore-Granville Hotel Company, an Illinois corporation, under section 77 B of the bankruptcy act.. (R. 2-33.) On February 13 the corporation filed an answer admitting the essential allegations of the petition and joining in the request for reorganization under section 77 B. (R. 34-35.) Thereupon, on the same day, the district court found that the petition for reorganization was filed in good faith and ordered: (1) that the creditors' petition stand approved as properly filed under section 77 B; (2) that the creditors of the debtor corporation be enjoined, until the further order of the court, from commencing or prosecuting any action against the debtor for the purpose of enforcing any lien or claim against its property, or interfering with the operation of its property; (3) that the receiver then in possession of the debtor's property, namely, Thomas D. Nash, county treasurer of Cook County (appointed receiver by the cir-

cuit court of Cook County), continue in possession until the further order of the court; (4) that a further hearing be held March 13 to determine whether a trustee should be appointed, or whether possession of the property should be restored to the debtor; (5) that George W. Rossetter, Jay C. McCord and Sidney H. Kahn, as members of the two bondholders committees concerned with the two first mortgage bond issues secured by separate parts of debtor's property, be permitted to file an intervening petition; (6) that notice be given by mail and publication to all creditors and stockholders of the further hearing provided by the order. (R. 36-37.)

Intervention of Nettie Meyer:

February 8, 1935—four days after the filing of the creditors' petition and five days before the entry of the order approving the petition—Nettie Meyer, as an alleged bondholder, filed an action for accounting in the superior court of Cook County, Illinois, against the debtor corporation and others, charging fraud by S. W. Straus & Co. in the original public sale of the two bond issues secured by debtor's property, also fraud in connection with the foreclosure of the two mortgages, also a fraudulent scheme to bring about a reorganization to the detriment of the bondholders and advantage of the defendants. (R. 38-62; 160 (par. 4).)

February 25, 1935, Nettie Meyer filed a petition in the 77 B proceeding; set forth in full the complaint filed a few days before in the state court; alleged that the federal court was without jurisdiction to interfere with the prosecution of her suit in the state court; alleged further that the petition for reorganization was not filed in good faith; then prayed: (a) that the reorganization proceedings be dismissed for want of jurisdiction, (b) that the proceedings be dismissed for want of good faith, (c) that the injunction be dissolved. (R. 37-65.)

Motions to strike and dismiss the petition of Nettie Meyer were filed by the petitioning creditors, by the debtor corporation, by the members of the bondholders committees. (R. 83-85, 85-87, 88-90.)

Upon consideration of said petition of Nettie Meyer and the several motions to strike and dismiss said petition, the trial judge announced (R. 90-93) that while he had no intention of destroying any cause of action the bondholders might have against S. W. Straus & Co., or against the mortgage trustees, or against the bondholders committee, he proposed to go ahead with the reorganization and to turn the debtor's property out of court as speedily as possible. The court said:

> "The bondholders have a right to get this out of court and to get it out speedily. I cannot see any reason why you should not go ahead. If you have a cause of action existing in this bondholder, or any bondholder, one of them or all of them, that is no part of the property of the debtor. I am not going to reorganize that cause of action, but, if there is a cause of action against anybody—I don't see it now, I haven't seen it—in the debtor, I am going to preserve that cause of action and pass it over to the reorganized corporation. In any event we are not going to throw it away." (R. 92.)

District court order of March 20, 1935:

Accordingly, on March 20, 1935, the court entered an order denying the prayers of the petition of Nettie Meyer to dissolve the injunction and to dismiss the proceedings for lack of jurisdiction and for bad faith. (R. 93.)*

From this order Nettie Meyer prayed an appeal in the district court. (R. 94-95.) The district court allowed the appeal upon the filing of an appeal bond in the sum of $500, the appeal not to operate as a stay of the proceedings. (R. 96.)

* The court did not dismiss the petition of Nettie Meyer, but reserved the motions to dismiss said petition until the presentation of the plan of reorganization and meanwhile required all parties to serve notice of further proceedings on her counsel. (R. 93.)

The appellees named in the citation on said appeal filed a joint motion in the circuit court of appeals to dismiss the appeal as one that could properly be taken only by leave of the appellate court, and on May 28, 1935, this motion was sustained and the appeal dismissed. (R. 103-105.)—

PROCEEDINGS IN DISTRICT COURT LEADING UP TO CASE NO. 5531 OF CIRCUIT COURT OF APPEALS, CASE NO. 376 OF THIS COURT.

Meanwhile the district court proceeded with the hearing on the plan of reorganization. In this phase of the case, however, Nettie Meyer chose not to participate. But the same firm of attorneys who represented her, Shulman, Shulman & Abrams, also represented six other holders of bonds (or certificates of deposit for bonds) who appeared in the case for the first time on April 20, 1935, when they filed with the special master: (a) proofs of claims, aggregating $8,000;* (b) objections to certain claims; (c) objections to the plan of reorganization as submitted to the court in the intervening petition filed by the members of the bondholders committees on February 27, 1935. (R. 138-140; 141-143.) Subsequently, on April 27, 1935, the same objectors filed in the clerk's office a proposed "amendment" to the plan of reorganization. (R. 144-145.)

Financial status of debtor corporation:

The debtor, in 1932, acquired ownership (subject to encumbrances) of the property known as the Sovereign Hotel, consisting of two buildings designed to be operated as a unit. The original owner, Albert Hotel & Building Corporation, on November 1, 1919, issued $1,000,000 6% first mortgage bonds, secured by trust deed and chattel mort-

* The record contains no proof of the interest of Nettie Meyer in these proceedings. However, with the consent of her counsel, we note that she is the holder of certificate of deposit no. B357 for bond no. 385 of the "Sovereign Annex" issue, in the amount of $1,000.

gage covering the "Sovereign;" and on August 1, 1922, the Sovereign Hotel Corporation issued $1,000,000 6½% first mortgage bonds, secured by trust deed and chattel mortgage covering the "Sovereign Annex." Both mortgages fell into default in 1931, whereupon two bondholders committees were organized, foreclosure suits were instituted in the circuit court of Cook county, decrees of foreclosure obtained. (R. 116.)

At the time of default there remained outstanding and unsubordinated, of the "Sovereign" bond issue, bonds in the principal amount of $575,000; of the "Sovereign Annex" bond issue, bonds in the principal amount of $798,000.

However, some time prior to the 1931 defaults, maturities of principal and interest under the two first mortgages had been met in part with the aid of advances made by S. W. Straus & Co., the house of issue, to the extent of $322,441.25. (R. 125, 160.) Additional cash advances, to meet other obligations of the hotel, were made by Nomis-Suarts Corporation, a Delaware corporation, affiliated with S. W. Straus & Co., to the extent of $73,371.45. (R. 125, 160.)*

Upon liquidation of S. W. Straus & Co., in a federal equity receivership proceeding, its claim for said advances was acquired, through purchase at the receiver's sale, by S. W. Assets Liquidation Corporation, organized for this purpose by approximately 96% of the creditors of S. W. Straus & Co. (R. 159.) While Nomis-Suarts Corporation still retained its claim for cash advances, it appeared that said corporation was heavily indebted and that any recovery on its claim would go to its creditors and not to persons connected with S. W. Straus & Co. (R. 159.)

---

* Claims for these advances were approved and allowed as follows: (1) class B claim for subordinated "Sovereign" bonds and coupons, $202,308.22, with interest at legal rate from December 11, 1931; (2) class B claim for subordinated "Sovereign Annex" bonds and coupons, $173,574.34, with interest at legal rate from December 28, 1931; (3) class C claim for cash advanced by Nomis-Suarts Corporation, $73,371.45. (R. 148.)

The foregoing indebtedness was assumed by the debtor corporation. (R. 123, 160.) In addition, the property of the debtor was also subject to approximately $129,669.70 unpaid general property taxes. (R. 111.)

In connection with the cash advances made by S. W. Straus & Co., the equity interest in the property was acquired by said corporation and title vested in Kenmore-Granville Hotel Company. (R. 21-22, 125.) Possession of the property was surrendered to the first mortgage trustees and the income applied for the benefit of first mortgage bondholders. (R. 22.) On or about August 14, 1934, Thomas D. Nash, county treasurer of Cook County, Illinois, was appointed tax receiver of the property by the circuit court of Cook County, Illinois, whereupon the mortgage trustees yielded possession to said receiver. (R. 5, 123.)

The drastic effect of the depression on the earnings of the hotel appears from the operating statements for the years 1931, 1932 and 1933. (R. 33, 75.)*

Plan of reorganization:

February 27, 1935, the bondholders committees filed an intervening petition setting forth a proposed plan of reorganization, *viz.*: the plan of reorganization agreed upon February 26, 1935, by (a) the two bondholders committees (of identical personnel), (b) the debtor corporation, (c) S. W. Assets Liquidation Corporation. (R. 115, 130.) This agreement reaffirmed, with certain minor amendments, the plan of reorganization originally adopted by the bondholders committees February 3, 1933,** and submitted

---

	1931	1932	1933
* Gross income	$267,407.79	$206,782.58	$156,803.55
Operating profit	79,436.96	24,788.63	30,737.73

Average occupancy shrank to the low point of 65.82% for the month of January 1934 (71.53% for the year 1933). (R. 73.)

** Rufus C. Dawes, Jay C. McCord, George W. Rossetter and Sidney H. Kahn were the members of the "Sovereign" bondholders committee when the plan of reorganization was originally adopted February 3, 1933. They were then also members of the "Sovereign Annex" bondholders committee, together with Robert E. Straus. (R. 115-116.)

to bondholders July 13, 1933, when it was accepted by the holders of approximately 94% of the unsubordinated and outstanding "Sovereign" first mortgage bonds, and 95% of the unsubordinated and outstanding "Sovereign Annex" first mortgage bonds. (R. 123.)

In 1933 it was contemplated that the plan of reorganization would be consummated through the foreclosure proceedings pending in the state court, but lack of cash funds stood in the way.

The amended plan of reorganization, as submitted by the bondholders committees February 7, 1935, is briefly summarized as follows (R. 122-130):

(1) Title to the hotel property to be vested in a new corporation, to be organized under the laws of Illinois.

(2) All authorized capital stock of the new corporation (common stock, with or without par value, as determined by counsel for committees) to be issued to three trustees to be selected by the committees.

(3) Certificates representing 90% of the capital stock to be issued to depositors of first mortgage bonds: 1¼ shares per $100 face amount "Sovereign" bonds and 1 share per $100 face amount "Sovereign Annex" bonds.

(4) Certificates representing 7½% of the capital stock to be issued to S. W. Assets Liquidation Corporation, in consideration of its claims on subordinated bonds and coupons.

(5) Certificates representing 2½% of the capital stock to be issued to Nomis-Suarts Corporation, in consideration of its claim for $73,371.45, also for causing title to the property to be conveyed to the new corporation.*

(6) Stock trust not to go into effect if opposed, upon referendum vote, by holders of 51% or more of amount of

* Nomis-Suarts Corporation then held all the stock of the owner corporation. (R. 125.)

the first mortgage bonds; otherwise to endure for a term of 10 years, subject to termination by holders of a majority in amount of the certificates at a meeting, or through referendum to be held at the end of each 2-year period, or at any time by a majority of the trustees.

(7) No sale or conveyance of the property to be voted by the trustees without submission to the certificate holders, nor then if holders of 33⅓% dissent.

(8) Certificate holders to have right to examine corporate records and books of account at any reasonable business hour; or to withdraw stock at any time upon surrender of certificates and payment of reasonable transfer fee and stamp tax.

(9) Aggregate compensation of three stock trustees not to exceed 1% of annual gross income derived from rental of rooms.

(10) No salaries to officers or directors of corporation while stock trust remains in effect.

District court order of February 27, 1935:

An order was entered by the district court February 27, 1935, permitting the intervening petition of the bondholders committees to be filed instanter; classifying creditors, providing for proof of claims, setting the case for hearing on the proposed plan of reorganization April 9, 1935, acceptances and objections to be filed meanwhile; providing for notice of said hearing by mail and publication. (R. 131-136.)

The time in which to file claims and objections to the plan of reorganization was afterwards extended to April 20, 1935 (R. 137), and, as already indicated, on April 20 certain objections to the proposed plan of reorganization were filed jointly by Anna Jacobson, Jacob Meyerhoff, John G. Pankin, Rae Mann, Joseph Meyerhoff and Julius Meyerhoff, the appellants herein (together with Nettie

Meyer). (R. 141-143.) The objections were: (1) that all further proceedings in the case should stop pending the disposition of the appeal taken by Nettie Meyer from the order entered March 20, 1935, which appeal was then pending in the circuit court of appeals (as case no. 5491); (2) that the plan of reorganization was inequitable because the bondholders were to receive stock in a corporation to be controlled by "the persons who have caused to sell the bonds to the public and have concealed material facts from them to their detriment," and because said persons were to receive 10% of the stock on a parity with the other bond owners; (3) that the members of the bondholders' committees should not be entrusted with promulgation of plans for future reorganization, or allowed to be the representatives of objectors who had deposited their bonds. (R. 142.)

Amendments of plan by court:

Upon consideration of the proposed plan and objections, the court on its own motion directed certain changes, among them the following (R. 161-165):

(1) Two of the three stock trustees to be designated by the court.

(2) Agent and depositary of trustees to be selected by court; compensation, not to exceed the usual amount, to be set in advance.

(3) Trustees each to receive as compensation ½ of 1% of annual gross income derived from room rentals, or $300, whichever shall be less.

(4) No new mortgage to be placed on property, for any purpose other than to pay taxes, except by court order.

(5) All allowances for services in connection with the reorganization to be fixed by the court.

(6) Expenses of reorganization and foreclosure not paid in cash to be evidenced by certificates of the new corpora-

tion bearing 5% interest, but the certificates not to be reducible to judgment.

With respect to the "amendment" to the plan of reorganization proposed by Anna Jacobson, *et al.*, (R. 144-145), the court commented as follows:

> "The amendment to the plan proposed by Anna Jacobson contemplates too complicated a plan of reorganization. Plans of reorganization should, especially in these real estate matters, be as simple as possible. Furthermore, it seems to the court that it is better, at the present time, to determine the relative rights, interests and preferences of all the parties in the property, so that when it comes time to sell the property there will not be a controversy, as there certainly would be a controversy if it were proposed to sell the property for enough to pay off class A certificates and nothing was to be left for class B or class C certificates. As the court has indicated, the time to settle that controversy is at the present moment.
>
> The proposed amendment of Anna Jacobson to the plan seems to be the preservation of a supposed cause of action against somebody, rather than the reorganization of this property and getting it out of court. The court has heretofore, in an oral opinion which was reduced to writing and filed herein on March 20, 1935, adequately expressed its views concerning said cause of action. The plan of reorganization as amended shall be amended expressly to provide that if there is any cause of action, or if there are any causes of action, in the debtor or in any person, firm or corporation for the debtor, such causes of action shall be preserved and passed to the reorganized corporation." (R. 164-165.)

Order of May 20, 1935, approving plan of reorganization:

May 20, 1935, the court entered an order confirming the plan of reorganization, amended in conformity with the court's directions. (R. 145-158.)*

Because of appellants' claim that this order is appealable under section 25a of the bankruptcy act, in the same

* This is the order involved in case no. 5531 of the circuit court of appeals, case no. 376 of this court.

manner as an order confirming a composition in bankruptcy, attention is directed to the essential features of this order, as follows:

(a) Recital that cause comes on to be heard on motion to confirm the proposed plan of reorganization, also upon objections to said plan and to certain claims of creditors, also on motion for a further order authorizing and directing the debtor and bondholders committee to carry the plan of reorganization into effect. (R. 145-146.)

(b) Findings: that due notice of this hearing has been given; that the special master has filed his report of claims and objections; that the members of the "Sovereign" first mortgage bondholders committee have filed a claim on $543,600 unsubordinated bonds (and that individual holders of certificates have also filed claims on $12,800 of the same bonds); that the members of the "Sovereign Annex" bondholders committee have filed a claim on $764,100 unsubordinated bonds (and that claims have been filed by individual holders of certificates of deposit for same bonds in amount of $19,200); that a claim has been filed on behalf of the holders of "Sovereign" subordinated bonds and coupons in the total sum of $202,308.22, with interest at the legal rate from December 11, 1931; that a claim has been filed on behalf of the holders of "Sovereign Annex" subordinated bonds and coupons in the sum of $173,574.34, with interest at the legal rate from December 28, 1931; that a claim has been filed by Nomis-Suarts Corporation in the amount of $73,371.45. (R. 147-148.)

(c) Findings: that "Sovereign" bondholders committee and "Sovereign Annex" bondholders committee, as holders respectively of $543,600 and $764,100 principal face amount of bonds, have filed their acceptance of the plan of reorganization as amended (*viz.*, 94.54% and 95.75%, respectively, of the outstanding unsubordinated first mort-

gage bonds); that acceptance of the plan has been filed by the holders of all the capital stock of the debtor; likewise by the owners of all class B and class C claims (*viz.*, claims on subordinated bonds and coupons and claim of Nomis Suarts Corporation). (R. 148-149.)

(d) Findings: that Anna Jacobson, Jacob Meyerhoff, John G. Pankin, Rae Mann, Joseph Meyerhoff and Julius Meyerhoff have filed a document setting forth objections to certain claims, also objections to the plan of reorganization; that objections to the same claims and objections to the plan of reorganization have also been filed by William H. Melvin; that no other objections have been filed to claims or to the plan of reorganization. (R. 149.)

The court thereupon orders, adjudges and decrees, as follows:

(1) That this proceeding was instituted in good faith and was properly brought under section 77B of the bankruptcy act, the debtor being unable to meet its obligations as they matured. (R. 149.)

(2) That debtor is not one of the class of corporations excluded from the operations of section 77B. (R. 149.)

(3) That the report of the special master on filing and classification of claims is approved. (R. 150.)

(4)-(8) Objections to claims overruled. (R. 150-151.)

(9)-(10) Objections to claims of mortgage trustees for trustees' and attorneys' fees reserved for later heating. (R. 151-152.)

(11) That plan of reorganization as amended has been accepted by creditors holding more than two-thirds in amount of each class whose claims have been allowed and would be affected by the plan and on behalf of stockholders of the debtor holding more than a majority of shares of each class, as required by the provisions of section 77B. (R. 152.)

(12) That said bondholders committees had authority to act in these proceedings and to accept the plan of reorganization on behalf of the persons who deposited bonds with said committees. (R. 152.)

(13) That all amounts to be paid for expenses and services incident to the reorganization are subject to the approval of the court. (R. 152.)

(14) That the offer and acceptance of the plan are in good faith. (R. 152.)

(15) That debtor is authorized by its charter and by applicable state and federal laws to take all necessary steps to carry out the provisions of the plan. (R. 152.)

(16) That on motion of the court the plan of reorganization is further amended (in the several respects enumerated in paragraphs numbered "A" to "H"). (R. 153-154.)

(17) That the amendment to the plan of reorganization as proposed by the bondholders committees does not materially or adversely affect the interests of any creditors or stockholders who have heretofore assented to the plan. (R. 155.)

(18) That the amendments to the plan made on motion of the court do not materially or adversely affect the interests of any creditors or stockholders of the debtor; that the plan of reorganization as amended is fair, equitable and feasible and complies with the provisions of section 77B; that the plan of reorganization as hereby amended is approved, confirmed and decreed to be in full force and effect. (R. 155.)

(19) That the proposed amendments to the plan submitted by Anna Jacobson, *et al.*, are disallowed. (R. 155.)

(20) That the debtor and the said committees, with the cooperation of counsel for the debtor, for said committees

and for the petitioning creditors, are hereby directed to proceed forthwith to take such action and to prepare and execute or cause to be executed such documents as may be necessary fully to comply with and carry out the provisions of the said plan of reorganization, as amended, and the court hereby retains jurisdiction to supervise the preparation and execution of said documents and to pass upon and approve the provisions therein contained. (R. 155.)

(21) In the event 51% of the bondholders do not vote against the creation of a stock trust, the court designates Paul W. Cleveland and Melvin M. Hawley to serve as trustees and approves the nomination by the bondholders committees of Paul Steinbrecher as the third trustee. (R. 156.)

(22) That the debtor and the said committees shall report in writing to this court on or before July 9, 1935, all acts and things done and performed by them in the execution and consummation of said plan of reorganization as amended and the documents incidental thereto and this cause is hereby continued until said date without further notice for the purpose of examining and confirming said report. (R. 156.)

(23) Case also continued to June 25, 1935, at which time court will pass upon fees and charges in connection with the reorganization. (R. 156.)

(24) Provides for turnover of property to new corporation by the county treasurer of Cook county, now in possession as receiver. (R. 156.)

(25) Court reserves jurisdiction over stock trust, if created, over the trustees and the trust property for the purpose of safeguarding in all respects the rights of holders of trust certificates. (R. 157.)

(26) Bondholders enjoined from commencing or prose-

cuting proceedings against debtor, its successor or assigns, or against property of debtor or new corporation. (R. 157.)

(27) Committees directed to conduct referendum of bondholders on question of formation of stock trust and to report to the court result of referendum. (R. 158.)

(28) The court reserves jurisdiction herein to enter such further orders as hereinafter may be deemed necessary or proper in connection with carrying out the terms and provisions of said plan of reorganization, as amended, and of this order and for terminating this cause. (R. 158.)

APPELLEES' CONTENTIONS.

(1) The district court order of March 20, 1935 (p. 4, *supra*)—denying Nettie Meyer's motion to dissolve the interlocutory injunction, also denying her motion to dismiss the proceedings for lack of jurisdiction and for bad faith—from which order Nettie Meyer took her appeal in circuit court of appeals case no. 5491, was an order entered within the course of proceedings in bankruptcy, therefore appealable only upon discretionary allowance by the appellate court under section 24b of the bankruptcy act.*

(2) Said order of March 20, 1935, did not fall within any of the exceptions (specified in section 25a of the bankruptcy act) in which appeals in bankruptcy proceedings may be taken without discretionary leave of the appellate court.

(3) The order of May 20, 1935 (pp. 11-16, *supra*), from which Nettie Meyer took her appeal in circuit court of appeals case no. 5531, by leave of the district court, was likewise an order entered within the course of bankruptcy proceedings, therefore appealable only at the discretion of the appellate court under section 24b of the bankruptcy act.

* Sections 24 and 25 of the bankruptcy act, so far as relevant, are quoted at p. 19, *infra*.

(4) Said order of May 20, 1935, confirming the plan of reorganization, etc., did not include, either expressly or as a statutory corollary (as in the case of confirmation of a composition), a discharge in bankruptcy, therefore did not come within section 25a (2) of the bankruptcy act.

(5) The circuit court of appeals did not err, therefore, in dismissing the appeals taken by Nettie Meyer by leave of the district court only.

(6) Nor did said court err in declining to grant Nettie Meyer leave to appeal, within its discretionary authority under section 24b of the bankruptcy act, from said district court order of May 20, 1935.

Summary of the argument.

I.

The district court order of March 20, 1935 (p. 4, *supra*), denying Nettie Meyer's motion to dissolve the restraining order entered February 13, 1935 (pp. 2-3, *supra*), and to dismiss the proceedings for lack of jurisdiction and for bad faith, was reviewable only upon discretionary allowance of an appeal by the appellate court under section 24b of the bankruptcy act; therefore the circuit court of appeals did not err in dismissing the appeal taken from said order by leave of the district court (case no. 5491 of the circuit court of appeals, case no. 375 of this court).

A. Proceedings under section 77B are "proceedings in bankruptcy."

Section 77B, sub-section (k); 11 U. S. C. sec. 207; c. 424, sec. 1, 48 Stat. 912.*

B. Said order did not come within the appellate jurisdiction conferred on the supreme court and the several circuit courts of appeal by section 24a of the bankruptcy act over "controversies arising in bankruptcy proceedings," but only within the jurisdiction in equity conferred on the circuit courts of appeal by section 24b of the bankruptcy act "to superintend and revise in matters of law the proceedings of the several inferior courts of bankruptcy within their jurisdiction;" such equity jurisdiction to be exer-

* *Section 77 B, sub-section (k):*

"* * * All other provisions of this title, except such as are inconsistent with the provisions of this section, shall apply to proceedings instituted under this section, whether or not an order to liquidate the estate has been entered. For the purposes of such application, provisions relating to 'bankrupts' shall be deemed to relate also to 'debtors'; 'bankruptcy proceedings' or 'proceedings in bankruptcy' shall be deemed to include proceedings under this section; the date of the order approving the petition or answer under this section shall be taken to be the date of adjudication, and such order shall have the same consequence and effect as an order of adjudication."

cised in the form and manner of an appeal, to be allowed in the discretion of the appellate court (except in the cases enumerated in section 25a of the act).*

In re Community Finance Co. (C. C. A. 4), 295 Fed. 773, 776.

Vitagraph, Inc. v. *St. Louis Properties Corp.* (C. C. A. 8), 77 F. (2d) 590, 594.

See also cases cited under points I-C, I-D and I-E, *infra.*

C. Said order of March 20, 1935, refusing to set aside the prior approval of the 77B petition and dismiss the proceedings, was not appealable under section 25a (1) as tantamount to "a judgment adjudging or refusing to adjudge the defendant a bankrupt."

Vallely v. *Northern Fire & Marine Ins. Co.*, 254 U. S. 348, 65 L. ed. 297 (first headnote).

Vitagraph, Inc. v. *St. Louis Properties Corporation* (C. C. A. 8), 77 F. (2d) 590.

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* Section 24 of the bankruptcy act of July 1, 1898, as amended May 27, 1926 (11 U. S. C. sec. 47; c. 406, sec. 9, 47 Stat. 664):

"(a) The Supreme Court of the United States, the circuit courts of appeal of the United States, the Court of Appeals of the District of Columbia, and the supreme courts of the Territories, in vacation, in chambers and during their respective terms, are invested with appellate jurisdiction of controversies arising in bankruptcy proceedings from the courts of bankruptcy from which they have appellate jurisdiction in other cases.

(b) The several circuit courts of appeal and the Court of Appeals of the District of Columbia shall have jurisdiction in equity, either interlocutory or final, to superintend and revise in matter of law (and in matter of law and fact the matters specified in section 48 of this title) the proceedings of the several inferior courts of bankruptcy within their jurisdiction. Such power shall be exercised by appeal and in the form and manner of an appeal, except in the cases mentioned in said section 48 of this title to be allowed in the discretion of the appellate court."

(c) All appeals under this section shall be taken within 30 days after the judgment, or order, or other matter complained of, has been rendered or entered.

Section 25a of the bankruptcy act of July 1, 1898, as amended May 27, 1926 (11 U. S. C. sec. 48 (a); c. 406, sec. 10, 44 Stat. 665):

"Appeals, as in equity cases, may be taken in bankruptcy proceedings from the courts of bankruptcy to the circuit courts of appeal of the United States and the Court of Appeals of the District of Columbia and to the supreme courts of the Territories in the following cases, to wit: (1) from a judgment adjudging or refusing to adjudge the defendant a bankrupt; (2) from a judgment granting or denying a discharge; and (3) from a judgment allowing or rejecting a debt or claim of $500 or over. Such appeal shall be taken within thirty days after the judgment appealed from has been rendered, and may be heard and determined by the appellate court in term or vacation, as the case may be. * * *"

Credit Alliance Corporation v. *Atlantic, Pacific & Gulf Refining Co.* (C. C. A. 8), 77 F. (2d) 595.

St. Louis Can Co. v. *General American Life Ins. Co.* (C. C. A. 8), 77 F. (2d) 598 (cert. allowed by this court, case no. 157 October term 1935).

Wilkerson v. *Cooch* (C. C. A. 9), 78 F. (2d) 311.

Winston v. *Hoyne* (C. C. A. 7), 277 Fed. 668, 670-671, 674 (cert. den. 258 U. S. 623, 66 L. ed. 796).

In re De Camp Glass Gasket Co. (C. C. A. 6), 272 Fed. 558, 559-560 (cert. den. sub nom. *Hamilton* v. *De Camp Glass Casket Co.*, 256 U. S. 703, 65 L. ed. 1179).

Humber v. *Bankers Trust Co.* (C. C. A. 6), 70 F. (2d) 265.

In re Ann Arbor Mach. Corp. (C. C. A. 6), 274 Fed. 24, 25.

Brady v. *Bernard & Kittinger* (C. C. A. 6), 170 Fed. 576, 579-580 (cert. den. 217 U. S. 595, 54 L. ed. 896).

In re Ives (C. C. A. 6), 113 Fed. 911, 912.

Bank of Elberton v. *Swift* (C. C. A. 5), 268 Fed. 305, 308.

In re Lone Star Shipbuilding Co. (C. C. A. 2), 6 F. (2d) 192, 193.

Chicago Bank of Commerce v. *Carter* (C. C. A. 8), 61 F. (2d) 986, 989-991.

Missouri Valley Cattle Loan Co. v. *Alexander* (C. C. A. 8), 276 Fed. 266, 268.

B-R Electric & Telephone Mfg. Co. v. *Aetna Life Ins. Co.* (C. C. A. 8), 206 Fed. 885, 886-887.

D. Although the circuit court of appeals for the 10th circuit has held that an order approving a petition under section 77B is appealable under section 25a (1), it also held in the same case that an order overruling a motion to

dismiss the proceedings was not reviewable under section 25a, but only under section 24b.

Humphrey v. *The Bankers Mortgage Company of Topeka,* no. 1291; also *The Bankers Mortgage Company of Topeka* v. *Humphrey,* no. 1292; decided August 26, 1935, Commerce Clearing House Bankruptcy Law Service, par. 3597.

E. Unless within the exceptions mentioned in section 25a, an appeal allowed in bankruptcy proceedings by the district court confers no jurisdiction on the appellate court and must be dismissed.

Swift & Co. v. *Hoover,* 242 U. S. 107, 61 L. ed. 175.

Deeley v. *Cincinnati Art Publishing Co.* (C. C. A. 6), 23 F. (2d) 920.

Broders v. *Lage* (C. C. A. 8), 25 F. (2d) 288, 289-290.

See also the cases cited under point I-C, *supra.*

II.

The appeal of Nettie Meyer from said order of March 20, 1935 (C. C. A. case no 5491), even if maintainable, presents only the empty claim that the bankruptcy court must stand aside and permit her to prosecute her state court action for accounting, etc., against the debtor corporation and others.

Assignment of errors in C. C. A. case no. 5491:—R. 95.

A. The jurisdiction of the bankruptcy court was paramount.

Continental Illinois Nat'l Bank & Trust Co. v. *C. R. I. & P. Ry. Co.* (C. C. A. 7), 72 F. (2d) 443, 450-451; affd. 294 U. S. 648, 79 L. ed. 642.

Grand Boulevard Inv. Co. v. *Strauss* (C. C. A. 8), 78 F. (2d) 180.

Gross v. *Irving Trust Co.*, 289 U. S. 342, 344-345; 77 L. ed. 1243, 1244-1245.

In re Greyling Realty Corp. (C. C. A. 2), 74 F. (2d) 734, 736-737 (cert. den. 294 U. S. 725, 79 L. ed. 664).

In re Prudence-Bonds Corp. (C. C. A. 2), 75 F. (2d) 262, 263-264.

B. If there was antecedent fraud in the conduct of the affairs of the debtor corporation, to be taken into account in passing upon the proposal of reorganization, the bankruptcy court was not powerless to deal with such a claim.

In re Marine Transit Corp. (C. C. A. 2), decided Aug. 16, 1935; Commerce Clearing House Bankruptcy Law Service, par. 3620.

C. The appellants Anna Jacobson, Jacob Meyerhoff, Joseph Meyerhoff, Julius Meyerhoff, John C. Pankin and Rae Mann were not parties to the proceedings in the district court on March 20, 1935, nor to the appeal taken by Nettie Meyer in circuit court of appeals case no. 5491; but a month later, on April 20, 1935, without challenge to the jurisdiction of the district court, appeared for the first time by filing their claims (together with objections to certain claims and to the proposed plan of reorganization).

Statement of case, *supra*, p. 5.

D. Nettie Meyer denies the jurisdiction of the district court to proceed in face of her motion to dismiss the proceedings, overruled March 20, 1935, while her six co-appellants affirm the continued jurisdiction of the district court and ask for review of its later order confirming the plan of reorganization (though they did not pray an appeal from said order in the district court, or petition the circuit court of appeals for allowance of such appeal).

III.

The district court order of May 20, 1935, confirming the plan or reorganization, etc. (pp. 11-16, *supra*), was reviewable only under section 24b of the bankruptcy act, at the discretion of the circuit court of appeals; therefore said court did not err in dismissing the appeal from said order granted by the district court (case no 5531 of the circuit court of appeals, case no. 376 of this court).

Campbell v. *Alleghany Corp.* (C. C. A. 4), 75 F. (2d) 947; cert. den. case nos. 85-6, October 1935 term.

Broders v. *Lage* (C. C. A. 8), 25 F. (2d) 288.

Also cases cited under points I-A, I-C and I-E, *supra.*

A. The contention that said order is appealable in the same manner as a composition in bankruptcy is untenable, since an order confirming a composition discharges the bankrupt, whereas an order confirming a plan of reorganization does not discharge the debtor.

Sec. 14 (c) of bankruptcy act of July 1, 1898, as amended June 25, 1910; 11 U. S. C. sec. 32 (c); s. 412, sec. 6, 36 Stat. 839.

Sec. 12 (b), (d) and (e) of bankruptcy act of July 1, 1898, as amended June 25, 1910; 11 U. S. C. sec. 30 (b), (d) and (e); c. 412, sec. 5, 36 Stat. 839.

In re O'Gara Coal Co. (C. C. A. 7), 260 Fed. 742, 744.

U. S. ex rel. Adler v. *Hammond* (C. C. A. 6), 104 Fed. 862, 865.

In re Bay State Milling Co. (C. C. A. 2), 223 Fed. 778.

In re Gottlieb (C. C. A. 2), 262 Fed. 730, 732.

C. Section 77B, in sub-section (h), specifically provides for discharge of the debtor, if any, not upon confirmation of the plan of reorganization, but only by final decree after the debtor has complied with all requirements of the confirmation order and the plan has been consummated.

Sec. 77B, sub-section (h); 11 U. S. C. sec. 207; June 7, 1934, c. 424, sec. 1, 48 Stat. 912.*

D. In a composition proceeding the debtor is required, before entry of the order confirming the composition, to do everything necessary to carry out the composition, leaving only distribution of the consideration; whereas in a reorganization proceeding the confirmation order is merely preliminary to the many acts to be performed by the debtor and others in consummating the reorganization.

Statement of case; synopsis of confirmation order, pp. 11-16, *supra*.

IV.

The appeal from the confirmation order was taken by Nettie Meyer alone; therefore the other six appellants who appear in this court cannot be heard to complain of the order dismissing said appeal.

Petition for appeal:—R. 166.
Order of district court granting appeal:—R. 168.
Appeal bond:—R. 168, 96-97.

A. Nettie Meyer made no objections to the proposed plan of reorganization and offered no amendments; in fact, took

* *Section 77B, sub-section (h):*
"* * * Upon the termination of the proceedings a final decree shall be entered discharging the trustee or trustees, if any, making such provisions as may be equitable, by way of injunction or otherwise, and closing the case. Such final decree shall discharge the debtor from its debts and liabilities, and shall terminate and end all rights and interests of its stockholders, except as provided in the plan, or as may be reserved as aforesaid. * * *"

no part in the district court proceedings subsequent to March 20, 1935; therefore, in her second appeal (C. C. A. case no. 5531), is necessarily limited to the same questions raised in her first appeal (C. C. A. case no. 5491).

V.

The circuit court of appeals did not err in declining to exercise its discretionary power under section 24b of the bankruptcy act to grant Nettie Meyer leave to appeal from the district court order of May 20, 1935, confirming the plan of reorganization.

A. Nettie Meyer alone signed the petition addressed to the circuit court of appeals, filed June 6, 1935, for leave to appeal from said confirmation order.

Petition for leave to appeal:—R. 172-176.

B. The six other appellants who appear in this court did not become parties to said petition of Nettie Meyer merely by the recital in the affidavit attached to said petition, made by Mr. Meyer Abrams, that "he is the attorney for the petitioner and for the other objectors, who join her in said petition prepared by him." (R. 176.)

Jackson v. *Hosmer*, 14 Mich. 88.

C. When the circuit court of appeals denied said petition of Nettie Meyer, on June 25, 1935 (R. 177-178)—more than 30 days after the entry of said confirmation order of May 20, 1935—it was too late for said six appellants to attempt, by subsequent petition, to make themselves parties to the original petition for leave to appeal filed by Nettie Meyer alone.

Petition filed in circuit court of appeals on June 28, 1935:—R. 178-180.

Order of circuit court of appeals on said petition, July 9, 1935, entered in case no. 5491:—R. 105.

D. Approval or disapproval of a plan of reorganization, proposed and accepted in conformity with the provisions of section 77B of the bankruptcy act, is essentially a matter for the discretion of the trial court.

In re Pilsener Brewing Co. (C. C. A. 9), 79 F. (2d) 63, 68.

In re New Rochelle Coal & Lumber Co. (C. C. A. 2), 77 F. (2d) 881, 883.

Campbell v. *Alleghany Corp.* (C. C. A. 4), 75 F. (2d) 947, 955.

Kansas City Terminal Ry. Co. v. *Central Union Trust Co.* (C. C. A. 8), 28 F. (2d) 177, 185 (cert. den. 278 U. S. 655).

Jameson v. *Guaranty Trust Co.* (C. C. A. 7), 20 F. (2d) 808, 811 (cert. den. 275 U. S. 569).

E. While mere numbers may not be controlling, it is significant that with ample notice and full opportunity to be heard the holders of only $9,000 out of $1,373,000 unsubordinated first mortgage bonds questioned the fairness of the plan of reorganization as confirmed by the court.

Statement of the case, p. 5, *supra.*

F. It is not required by section 77B of the bankruptcy act, nor by the due process clause of the fifth amendment, nor by the general principles of equity, that in the reorganization of a corporation entitled to relief in bankruptcy the claims of creditors shall be preserved either (a) to their full extent or (b) with exactly the same priorities; but on the contrary, the purpose of the statute to rehabilitate financially embarrassed corporations necessarily calls for compromise, readjustment and scaling down of obligations in a manner (a) to end further controversy between creditors of different classes and (b) to cure existing defaults and avoid future defaults.

Canada Southern Rd. Co. v. *Gebhard,* 109 U. S. 527, 27 L. ed. 1020, 1023-1024.

Campbell v. *Alleghany Corp.* (C. C. A. 4), 75 F. (2d) 947, 954-955.

Kansas City Terminal Ry. Co. v. *Central Union Trust Co.*, 271 U. S. 445, 454, 70 L. ed. 1028, 1032.

Jameson v. *Guaranty Trust Co.* (C. C. A. 7), 20 F. (2d) 808, 811 (cert. den. 275 U. S. 569).

In re Central Funding Corp. (C. C. A. 2), 75 F. (2d) 256, 260-261.

In re Prudence-Bonds Corp. (C. C. A. 2), 77 F. (2d) 328, 330.

In re Island Park Associates, Inc. (C. C. A. 2), 77 F. (2d) 334, 337.

In re Hotel Gibson Co. (D. C., S. D. Ohio), 11 F. Supp. 30, 36.

In re Bush Terminal Co. (D. C., E. D. N. Y.), 10 F. Supp. 315, 316.

G. The aim of section 77B to restore embarrassed debtors and their property to normal commercial status, by terminating prolonged and costly receiverships—frequently fostered by the maneuvers of a few dissenting security holders who hope to gain special advantage by blocking the efforts of the majority to bring about a reorganization—would be subverted if such dissenters were permitted by means of insubstantial appeals to delay the reorganization proceedings.

In re Sterba (C. C. A. 7), 74 F. (2d) 413, 416-417.

Guaranty Trust Co. v. *Chicago M. & St. P. Ry. Co.* (D. C., N. D. Ill.), 15 F. (2d) 443, 444.

Palmer v. *Bankers Trust Co.* (C. C. A. 8), 12 F. (2d) 747, 754.

Broders v. *Lage* (C. C. A. 8), 25 F. (2d) 288, 290.

ARGUMENT.

I.

Order of March 20, 1935, not appealable under section 24a. (No. 375 of this court; no. 5491 C. C. A.)

In support of her first appeal, Nettie Meyer cites* *McGonigle* v. *Foutch* (C. C. A. 8), 51 F. (2d) 455; *Molina* v. *Murphy* (C. C. A. 1), 71 F. (2d) 6[illegible]5; *Lamb* v. *Townshend* (C. C. A. 4), 71 F. (2d) 590; *Irving Trust Co.* v. *Fleming* (C. C. A. 4), 73 F. (2d) 423; *In re B. & R. Glove Corp.* (C. C. A. 2), 279 Fed. 372; *Clark* v *Huckaby* (C C. A. 8), 28 F. (2d) 154 (quoting from *Taylor* v. *Voss,* 271 U. S. 176); *Bryan* v. *Speakman* (C. C. A. 5), 53 F. (2d) 463:—cases in which the orders under consideration were held appealable as *controversies arising in bankruptcy proceedings,* as distinguished from orders entered *within the course of bankruptcy proceedings.*

Before commenting on these cases, we remind the court of the exact situation in the case at bar. The creditors' petition was filed February 4, 1935, the debtor's answer February 13, 1935. On the date of the answer the court found that the creditors' petition complied with the statute and was filed in good faith; ordered that the petition stand approved; ordered that creditors be restrained from otherwise proceeding against the debtor corporation or its property until further order of the court; authorized the state court receiver (in the tax receivership action) to continue in possession of the debtor's property until further order of the court. (pp. 2-3, *supra*).

Nettie Meyer commenced her state court action February 8, 1935; filed her petition in the bankruptcy court to

* Petition for certiorari, pp. 16-18.

dismiss the 77B proceedings on February 25, 1935. On said petition and the several motions to dismiss the petition, the court entered the order of March 20, 1935, denying "the prayer contained in the petition of Nettie Meyer to dissolve the injuiction and to dismiss the proceedings for lack of jurisdiction and for bad faith." (R. 93.)

It thus appears that Nettie Meyer came into the federal court by her petition of February 25, 1935, to endeavor to persuade that court to abandon the pending bankruptcy proceeding in favor of her state court action for accounting against numerous parties, including the debtor corporation—*a suit started four days after the filing of the petitioner under section 77B.*

Precisely, she asked that the district court set aside its former finding that the creditors' petition for reoganization was filed in good faith; and thereby annul its approval of said petition, by force whereof the district court had acquired "exclusive jurisdiction of the debtor and its property wherever located for the purpose of this section."*

The approval of a petition for reorganization under section 77B, by express provision of the statute, is given (for all purposes of the reorganization proceeding) the effect of an adjudication in bankruptcy (p. 18, *supra,* footnote). A motion to dismiss the proceedings, after such approval, is essentially the same as a motion to vacate an adjudication of bankruptcy. That an order refusing to vacate an adjudication emanates from a "proceeding in bankruptcy," not a "controversy arising in bankruptcy proceedings," is established by the overwhelming array of decisions of this court and of the several circuit courts of appeal. (*In re Community Finance Co.* (C. C. A., 4), 295 Fed. 773, and cases therein cited at p. 776; also the cases above cited in summary of argument, points I-C, I-D and I-E, pp. 19-21, *supra.*)

* Sub-section (a), section 77B; 11 U. S. C. section 207.

In *Vallely* v. *Northern Fire & Marine Ins. Co.*, 254 U. S. 348, 41 S. Ct. 116, 65 L. ed. 297, this court held that a petition to revise in matter of law under section 24b of the bankruptcy act was the proper remedy to review an order of an inferior court of bankruptcy vacating an adjudication and dismissing the proceeding for want of jurisdiction. Obviously, the right of appeal in such a case does not turn upon the result of the motion; that is, whether the trial court vacates the order of adjudication or abides by its former ruling. (*In re De Camp Glass Casket Co.* (C. C. A. 6), 272 Fed. 558, 559.)

As we shall show at a later point, the question has frequently been raised whether an order vacating or refusing to vacate a prior adjudication is appealable under section 25a, as tantamount to an order adjudging or refusing to adjudge the defendant a bankrupt (with virtual unanimity of decision in the negative, especially since the announcement made by this court in the *Vallely* case). But the claim now asserted by appellants that such an order is appealable under section 24a as a controversy arising in bankruptcy proceedings, rather than an order within the course of bankruptcy proceedings, has apparently seldom been advanced and never successfully. That the cases cited by appellants deal with orders of a fundamentally different nature is quite obvious, as follows:

> *McGonigle* v. *Foutch*, 51 F. (2d) 455, 459:—Appeals allowed both by district court and appellate court from order, on petition of trustee in bankruptcy, restraining further prosecution of state court proceedings to foreclose mechanics' liens and deed of trust (the liens having been acquired more than four months before the petition in bankruptcy was filed). A majority of circuit court of appeals (Mr. Justice Booth dissenting on this point) were of the opinion that the order arose in a "controversy" in bankruptcy, rather than a "proceeding" in bankruptcy, and was otherwise of the character requisite to make it appealable under section 129 of the judicial code (28 U. S. C., sec. 227).

Molina v. *Murphy*, 71 F. (2d) 605:—In a proceeding under section 74 of the bankruptcy act, on petition of the debtors, the federal court entered an order restraining sales under decree in a foreclosure suit commenced in the district court of San Juan some eight months before the petition under section 74 was filed. At the time the section 74 petition was filed the property on which the mortgage lien existed was in possession of receivers appointed by the district court of San Juan. Obviously, this was an order entered in a "controversy" between the petitioning debtors and the receivers who held possession of the mortgaged property, not an order within the course of the bankruptcy proceeding.

Lamb v. *Townshend*, 71 F. (2d) 590, 594:—Appeal by receiver of insolvent state bank from turnover order entered summarily in bankruptcy proceeding, on petition of trustee in bankruptcy. "We think that, as the proceeding was instituted by the trustee for the recovery of property in the possession of the receiver, to which the latter asserted an adverse claim, it is 'a controversy arising in a bankruptcy proceeding,' as distinguished from an administrative 'proceeding' in bankruptcy, and that it is reviewable by appeal under section 24a."

Irving Trust Co. v. *Fleming*, 73 F. (2d) 423, 429:—Appeal from order dismissing petition of trustee in bankruptcy of McCrory Stores Corporation, which petition sought a summary order requiring state court receivers to turn over to the trustee in bankruptcy property seized by them from the trustee. Obviously, the dispute between the bankruptcy trustee and the state court receivers over the property in question was a "controversy arising in a bankruptcy proceeding," therefore the order was reviewable under section 24a.

In re B. & R. Glove Corp., 279 Fed. 372, 375:—"This is a proceeding by a creditor of the bankrupt to reclaim property in the hands of the receiver, and this court in the case of *in re Toole*, 270 Fed. 195, held that a reclamation by a third party of his own property in the hands of a trustee is a controversy arising in bankruptcy proceedings, and the proper remedy is appeal under section 24a, and not a petition to revise under section 24b of the bankruptcy act."

Clark v. *Huckaby*, 28 F. (2d) 154, 156-157.—Order appealed from sustained lien of chattel mortgage on bankrupt's stock of merchandise and store fixtures, as against the claim of the receiver in bankruptcy. "The intervener did not assert a claim for the balance due on the mortgage notes. He asked to be declared the owner of the property in the hands of the receiver (in bankruptcy). The purpose of the action was to establish a lien upon certain property, independent of, and not incidental to, the allowance of a demand. • • • The issue here presented is properly reviewable as a controversy arising in a bankruptcy proceeding under section 24a, as amended, of the bankruptcy act."

Bryan v. *Speakman*, 53 F. (2d) 463, 465:—Bankruptcy court denied petition of state court receiver for possession of certain property in the hands of bankruptcy trustee. Held: final order in a controversy arising in bankruptcy proceedings, therefore appealable as of right under section 24a.

Taylor v. *Voss*, 271 U. S. 176, 70 L. ed. 889:—Trustee in bankruptcy filed petition in bankruptcy proceeding alleging that testamentary trustee of bankrupt's deceased wife claimed an interest in the real estate of the bankrupt, and praying that such interest be fixed and right to sell the real estate free from such claim be declared. The testamentary trustee answered, alleging that the bankrupt's wife, prior to her death, had become absolutely vested with a wife's interest in the real estate of her husband, also praying that the court fix this interest. The referee held that the testamentary trustee was entitled to receive one-fifth of proceeds of sale of the real estate. Order confirmed by district court judge. Petition by trustee in bankruptcy in circuit court of appeals to review this order in matter of law, under section 24b. Motion by testamentary trustee to dismiss this petition on ground that it presented a controversy arising in the bankruptcy proceeding which could be reviewed only by appeal under section 24a. Motion denied by circuit court of appeals, on ground that while the petition presented such a controversy the matter might nevertheless be considered as though it had been brought up by appeal under section 24a. The circuit court of appeals reversed the order of the district court, whereupon this court granted

a writ of certiorari. Held: on the procedural question, that a "controversy" in bankruptcy, though appealable under section 24a, may also be reviewed in matter of law only (when the facts are undisputed) by a petition to revise under section 24b.

* * * * *

To summarize, the cases cited by appellants involve controversies between (a) claimants of specific property and (b) the bankruptcy estate (represented, generally, by a trustee or receiver). The appeal, in such controversy, does not automatically suspend the bankruptcy proceedings, though it may ultimately affect the extent of the estate. Stated another way, the appeal does not take to the appellate court the bankruptcy proceedings, as such, but only a collateral controversy that has arisen between "C" (claimant) and "T" (trustee), or between other adversaries similarly opposed.

In the case at bar, as it happens, all the property of the debtor corporation was in the hands of a receiver appointed in a state court action to subject the property to the payment of taxes. (R. 36:—par. 3 of order of February 13, 1935.) Nettie Meyer held no property belonging to the debtor corporation; nor did she claim that the debtor corporation, or any representative of the bankruptcy estate, held any specific property that belonged to her, or to which she had right of possession. No controversy arose between her and anyone else as an incident of the bankruptcy proceedings. She simply wanted the proceedings stopped, or indefinitely suspended, so that she might go ahead *ad libitum* with her personal program of litigation in another court, albeit a court of inferior jurisdiction;—litigation seeking general administration of the property and business of the debtor corporation by the state court rather than the bankruptcy court, not the protection of some property right to which she made claim against all persons interested in the bankruptcy estate.

SECTION 25a(1).

The appellant Nettie Meyer asserts no right of appeal from the order of March 20, 1935, under section 25a(1) of the bankruptcy act. However, such claim was asserted in the petition for certiorari in *St. Louis Can Co.* v. *General American Life Ins. Co.*, case no. 157 October term 1935 (certiorari granted October 14, 1935), wherein the district court set aside and vacated its former order approving the debtor's voluntary petition under section 77B and dismissed the proceedings, and the appellate court dismissed the appeal prayed in the district court. Because of the grant of certiorari in the *St. Louis Can Co.* case, we have considered the authorities with respect to the appealability of such an order under section 25a(1).

We find no recent conflict of authority on the question whether an order entered upon a motion to set aside a prior order approving a petition under section 77B is reviewable under section 25a of the bankruptcy act. All the decisions, so far as we can discover, agree that such an order is not reviewable under section 25a, but only by leave of the appellate court under section 24b.

We call attention, first, to analogous cases preceding the enactment of section 77B of the bankruptcy act, as follows:

> *Winston* v. *Hoyne* (C. C. A. 7), 277 Fed. 668:—Adjudication on voluntary petition filed by two petitioners as alleged sole members of partnership. Petition by Winston (presumably a creditor) to vacate order of adjudication, upon claim that there were 14 other partners and no insolvency. Petition dismissed. Review sought both by appeal and by petition to review and revise. Held: Order not appealable, reviewable only by petition to review and revise. Appeal dismissed; and on petition to revise, order affirmed. (Certiorari denied, 258 U. S. 623, 66 L. ed. 796.)
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> *In re De Camp Glass Casket Co.* (C. C. A. 6), 272 Fed. 558:—Adjudication of bankruptcy upon voluntary pe-

tition of corporation. Petition by stockholders to set aside adjudication; order setting aside adjudication on ground that directors were without power to authorize filing of voluntary petition for adjudication without vote of stockholders. Petition to revise under section 24b. Motion to dismiss petition to revise on ground that order was not reviewable under section 24b, but only under section 25a(1). Held: Order not appealable under section 25a, but reviewable only under section 24b; that so far as concerns method of review, it is immaterial whether the motion to vacate is granted or denied. (Certiorari denied, sub nom. *Hamilton* v. *De Camp Glass Casket Co.*, 256 U. S. 703, 65 L. ed. 1179.)

Humber v. *Bankers Trust Co.* (C. C. A. 6), 70 F. (2d) 265:—Adjudication of bankruptcy on voluntary petition. Receiver appointed in creditors' state court proceeding filed petition to vacate adjudication and dismiss voluntary petition for want of jurisdiction. Petition granted. Appeal allowed by the district court dismissed by the appellate court. On authority of *Vallely* v. *Northern Fire & Marine Ins. Co.*, 254 U. S. 348, the court overruled its former contrary holding in *Michigan Garage & Accessory Co.* v. *Drury*, 31 F. (2d) 434.

Brady v. *Bernard & Kittinger* (C. C. A. 6), 170 Fed. 576:—Order of adjudication on involuntary petition. Motion by alleged creditors (together with alleged bankrupt) to set aside order of adjudication, on ground that bankrupt's consent to adjudication had been filed by his attorney without authority. Motion to set aside order of adjudication overruled. On the appeal taken from the judgment of adjudication, motion to dismiss granted by the appellate court because not taken within the required time. On the appeal from the order refusing to set aside the adjudication, dismissed by the court on its own motion for the reason that the order was not subject to appeal, but reviewable only under section 24b. Quoting from the opinion of the court (by Mr. Justice Sanford):

> "While the line of demarcation between the classes of cases respectively appealable and reviewable is not always distinctly marked, it is clear that the proceedings under the motion to set

aside the judgment adjudicating Brady a bankrupt related to an administrative matter which arose in the ordinary course of the administration of the bankrupt estate, under the power of the court to set aside a judgment improperly obtained as an incident to the principal cause and without recourse to an original proceeding for that purpose (*Doss* v. *Tyack*, 14 How. 297, 14 L. ed. 428), and that the order or judgment overruling the motion to set aside the adjudication would have been reviewable by this court in matter of law upon a petition for review seasonably filed in this court. It was expressly held by this court in the case of *In re Ives*, 113 Fed. 911, 51 C. C. A. 541, that an order sustaining a demurrer to a petition filed for the purpose of vacating an adjudication in bankruptcy is not a judgment from which an appeal will lie, under section 25 of the bankruptcy act, but is reviewable by petition in matters of law. And in the case of *Plymouth Cordage Company* v. *Smith*, 194 U. S. 311, 24 Sup. Ct. 725, 48 L. ed. 992, in which it was held that the circuit court of appeals had jurisdiction to revise in matter of law the proceedings of a district court in Oklahoma, in bankruptcy, it appears that one of the particulars in which it was sought to review such proceedings was the refusal of the district court to permit certain creditors of the bankrupt to file a motion to set aside an order dismissing a petition in involuntary bankruptcy. Clearly, the revisory power in reference to setting aside an order dismissing a petition in bankruptcy would be the same as that in reference to an order refusing to set aside an adjudication of bankruptcy."

(Certiorari was denied in this case, 217 U. S. 595, 54 L. ed. 896.)

In re Ives (C. C. A. 6), 113 Fed. 911: On voluntary petition, partnership and individual members thereof adjudged bankrupt. Petition by creditor (and trustee holding security for creditor) to set aside adjudication on the ground that Albert Ives, Sr., at the time he executed power of attorney to file a petition in bankruptcy and at the time of adjudication, was mentally incompetent, therefore the proceedings were void

as to him. Demurrer to this petition sustained. Petition to revise filed in the circuit court of appeals.

> "The trustee urges in this court that the remedy of the petitioners, if any, is by an appeal from the order sustaining the demurrer, and that the 10 days provided for an appeal expired before the petition here was filed. * * * An order sustaining a demurrer to a petition filed for the purpose of vacating an adjudication is not referred to in this section (*viz.*, section 25), and is not a judgment from which an appeal will lie within its purview. It rather comes within section 24, authorizing the circuit court of appeals 'to superintend and revise in matters of law proceedings of the several inferior courts of bankruptcy within their jurisdiction,' which provides a summary mode of reviewing the orders of the bankruptcy courts upon questions of law on petitions filed in the appellate court by parties aggrieved."

In the following cases, likewise, orders refusing to set aside former adjudications of bankruptcy were held reviewable only under section 24b:

In re Ann Arbor Mach. Corp. (C. C. A. 6), 274 Fed. 24.

Bank of Elberton v. *Swift* (C. C. A. 5), 268 Fed. 305.

In re Lone Star Shipbuilding Co. (C. C. A. 2), 6 F. (2d) 192.

Chicago Bank of Commerce v. *Carter* (C. C. A. 8), 61 F. (2d) 986.

Missouri Valley Cattle Loan Co. v. *Alexander* (C. C. A. 8), 276 Fed. 266.

B-R Electric & Telephone Mfg. Co. v. *Aetna Life Ins. Co.* (C. C. A. 8), 206 Fed. 885.

In the light of the foregoing cases, also the many additional authorities therein cited, we submit that an order refusing to set aside a prior order approving a petition filed under section 77B of the bankruptcy act is reviewable only by discretionary leave of the appellate court under

section 24b, as was held by the circuit court of appeals for the 7th circuit in the present case and by the circuit court of appeals for the 8th circuit in *Credit Alliance Corporation* v. *Atlantic, Pacific & Gulf Refining Co.*, 77 F. (2d) 595.

In *Wilkerson* v. *Cooch* (C. C. A. 9), 78 F. (2d) 311, a proceeding under section 75 of the bankruptcy act (11 U. S. C., sec. 203), instituted by debtor as an alleged farmer, a secured creditor filed a petition praying that the proceedings be dismissed on the ground that the debtor was not a farmer within the meaning of the statute. The court found that the debtor did not come within the term "farmer" as defined in the act. The petition of the intervening creditor was granted and debtor's petition dismissed. From this order, an appeal was allowed by the trial judge. On motion of appellee to dismiss the appeal, the court said:

> "We are not dealing with an appeal from the implied adjudication resulting from the filing of the petition which, under the statute (11 U. S. C. A., sec. 75 (n), is the equivalent of an adjudication in bankruptcy, but from an order of dismissal made on application of a creditor to set aside the implied adjudication and to dismiss the proceedings.
>
> An order setting aside an adjudication in bankruptcy previously entered in the case and not appealed from is not appealable under 11 U. S. C. A., sec 48 (a) which permits an appeal 'from a judgment adjudging or refusing to adjudge the defendant a bankrupt,' but is appealable only under the provisions of 11 U. S. C. A., sec. 47 (b) when allowed by the circuit court of appeals in the exercise of its discretion. This conclusion follows, we think, from the decision in *Vallely* v. *Northern Fire & Marine Ins. Co.*, 254 U. S. 348 * * *."

We note, finally, the decision rendered August 26, 1935, by the circuit court of appeals for the 10th circuit in *Humphrey* v. *The Bankers Mortgage Company.**

*Opinion not officially reported at time of preparation of this brief, but quoted in Commerce Clearing House Bankruptcy Law Service, par. 3597.

An involuntary petition under section 77B was filed by creditors October 22, 1934. On November 12, 1934, the debtor corporation and its state court receiver filed a motion to dismiss said petition. This motion was overruled April 3, 1935, but was followed by a motion to set aside said order of April 3, 1935, which likewise was denied. Thereafter, on May 18, 1935, an order was entered finding that the involuntary petition was filed in good faith and approving it.

On the same day, May 18, 1935. the debtor corporation filed a voluntary petition under section 77B, which was immediately approved by another judge of the same court. In the second case the petitioning creditors in the involuntary proceedings interposed a motion to dismiss the subsequent voluntary proceeding on the ground that by the approval of the petition in the former case the court had acquired and exercised exclusive jurisdiction of the debtor and its property and that in consequence the later filing of the voluntary petition conferred no jurisdiction upon the court. This motion was overruled (on the finding, among others, that the petitioning creditors in the involuntary proceeding did not have claims against the corporation in excess of the securities held by them).

The other orders made in the two cases are not here relevant. A series of appeals were taken in both cases, all by leave of the district court only, among them: (1) an appeal by the debtor corporation from the order in the involuntary proceeding approving the creditors' petition; (2) an appeal by the debtor corporation and its receiver from the order in the involuntary proceeding refusing to set aside the order of April 3, 1935, which denied the motion made November 12, 1934, to dismiss the petition; (3) an appeal in the voluntary proceeding, by the petitioning creditors in the involuntary proceeding, from the order

denying their motion to dismiss the voluntary proceedings.

Of the three appeals above mentioned, only the first was entertained by the circuit court of appeals, on the ground that an order approving a petition under section 77B was equivalent to an order adjudging the debtor a bankrupt, therefore appealable under section 25a(1). However, the second and third appeals above mentioned were dismissed, on the court's own motion, for the reason that the orders were made in a proceeding in bankruptcy and were reviewable only by leave of the appellate court under section 24b (citing *Campbell* v. *Alleghany Corp.*, 75 F. (2d) 947).

We have no occasion, under the facts of the present case, to discuss the appealability of an order approving a petition for reorganization under section 77B. We merely comment, in passing, that although section 77B gives to the order approving the petition the effect of an adjudication in bankruptcy, it does so only for the purposes of the reorganization proceedings; that it expressly provides, in sub-section (c) (8), that if a plan of reorganization is not proposed or accepted within such reasonable period as the judge may fix, or if proposed and accepted is not confirmed by the court, and if the judge has not found the debtor to be insolvent, the proceeding may be dismissed without liquidation of the estate.

But, whatever may be the true rule as to appealability of an order approving a petition under section 77B, it seems beyond dispute on principle and authority that an order refusing to set aside a prior order approving such petition and dismissing the proceedings is reviewable only under section 24b of the bankruptcy act, at the discretion of the appellate court. An appeal from such an order, granted by the district court, confers no jurisdiction on the appellate court and must be dismissed. (See cases cited under points I-C and I-E, pp. 19-20, 21, *supra.*)

II.

The appeal in case no. 375 (C. C. A. 5491), even if maintainable, presents no substantial issue.

The errors assigned on this appeal (R. 95), although seven in number, merely reiterate in different form a single proposition: that because Nettie Meyer had filed her complaint in the state court, as set forth in the petition filed by her in the bankruptcy court, the latter court was required to yield its jurisdiction.

As we understand the position of appellants, the bankruptcy court was bound to accept Nettie Meyer's state court complaint at its face value, however unfounded the charges. Indeed, throughout the petition for certiorari, the allegations, innuendoes and conclusions of said complaint are stated to this court not as mere charges, but as established facts. The issue raised by (a) Nettie Meyer's petition to dismiss the 77B proceedings, and (b) the several motions of appellees to strike or dismiss her petition (R. 83-90), was not the truth or falsity of her state court complaint, but whether the mere filing of such a complaint debarred the bankruptcy court from exercising further jurisdiction in a case otherwise cognizable under section 77B.

Nettie Meyer assigned as error that "it affirmatively appears that there is no creditor and no debtor involved in these proceedings." (R. 95, assignment no. 3.) This statement is many times repeated, in variant form, in the petition for certiorari. For example, at page 20 of the petition: "The new corporation did not assume the debt. It was a mere paper organization for the reorganization purposes. It in fact never existed."

Nettie Meyer, in her petition in the bankruptcy court, stated that the debtor corporation was in existence more

than three years ago; that on October 27, 1932, it received conveyance of the title to the hotel property. (R. 50.). The petitioning creditors, in their verified petition for reorganization under section 77B, alleged that the several petitioners were creditors of the debtor as owners, in the aggregate, of $7,000 "Sovereign" and $8,000 "Sovereign Annex" first mortgage bonds, "all of which are obligations of the debtor." (R. 7, par. 15.) This was admitted by the debtor in its verified answer. (R. 34, par. 1.) If appellants desired to controvert the truth of the facts alleged in the creditors' petition, or the debtor's answer, they were at liberty to do so under the provisions of sub-section (a) of the statute, as follows (11 U. S. C. sec. 207 (a)):

> "If three or more creditors* who have provable claims which amount in the aggregate in excess of the value of securities held by them, if any, to $1,000 or over, or if stockholders holding 5% in number of all shares of stock of any class of the debtor outstanding shall, prior to the hearing provided for in subdivision (c), clause (1) of this section appear and controvert the facts alleged in the petition or answer, the judge shall determine as soon as may be the issues presented by the pleadings, without the intervention of a jury, and unless the material allegations of the petition or answer are sustained by the proofs, the proceedings shall be dismissed."

The truth of the creditors' petition and the debtor's answer stands unchallenged on the record of this case. Moreover, the statement of evidence upon the hearing on the plan of reorganization shows without dispute that the debtor corporation had assumed payment of the outstanding first mortgage bonds. (R. 160, par. 5.)

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*Section 77B, sub-sec. (b); 11 U. S. C. sec. 207 (b):

"* * * The term 'creditor' shall include for all purposes of this section and of the reorganization plan, its acceptance and confirmation, all holders of claims of whatever character against the debtor or its property, including claims under executory contracts, whether or not such claims would otherwise constitute provable claims under this title."

How, then, does it affirmatively appear that there is no creditor and no debtor in these proceedings? What motives prompted various participants in the reorganization proceedings of the debtor corporation is immaterial. The question for the court was whether the petition and answer presented all the essential elements calling for the exercise of jurisdiction under the statute.

Quite appropriate is the statement of the court in *Bank of Elberton* v. *Swift* (C. C. A. 5), 268 Fed. 305, in response to the claim that the purpose of the bankruptcy proceeding was to avoid payment of objector's note out of an anticipated legacy (p. 308):

> "It does not seem to us that the act takes into account the motives of creditors in involuntary proceedings, or of debtors in voluntary proceedings; but instead of that, in view of the fact that such a practical subject as business relations between debtor and creditors is being dealt with, it concerns itself rather with conditions as they exist, and undertakes to fix definitely the obligations of the debtor and the rights and remedies of the creditor. In our judgment it was thought best by congress to prescribe general rules, which would usually promote satisfactory results, notwithstanding the fact that in isolated instances it would be difficult, if not impossible, to attain to the high standards of exact justice."

No argument is needed to demonstrate the compelling need in the case at bar for the exercise of jurisdiction under section 77B of the bankruptcy act: (1) holders of $1,373,000 unsubordinated first mortgage bonds and holders of $449,254.01 subordinated claims against the debtor and its property, seeking to protect their interests by preserving and rehabilitating the hotel enterprise; (2) a business dependent upon the continued operation as a single unit of two buildings covered by two separate mortgages; (3) foreclosure decrees entered back in 1932, but not yet consummated by sales, first, because no satisfactory cash sale

could be made in the current market, second, because the majority bondholders could not themselves buy in the properties at foreclosure sales for lack of ability to make the requisite cash payments (over and above the credits on their bonds); (4) need of compromise between senior claimants and junior claimants, through an equitable plan of reorganization, in order to avoid years of continued litigation and receivership; (5) need to restore the enterprise to a normal commercial status, as speedily as possible, so that the reorganized corporation might by improved earnings or new financing be freed from the further penalties of unpaid general property taxes.

Nor need we dwell upon the elementary proposition of law that jurisdiction in bankruptcy, once it attaches, is paramount. (Cases under point II-A, pp. 21-22, *supra*.) In short, no legal or equitable reason was shown by Nettie Meyer for discontinuance of the reorganization proceedings. These proceedings in no way hindered the prosecution by Nettie Meyer of any purported cause of action in her favor against those from whom she purchased her $1,000 bond, or against the mortgage trustee, or against other parties named as defendants in her state court complaint (except the debtor corporation). If, on the other hand, Nettie Meyer desired on behalf of herself and others to prosecute claims for accounting against third parties in favor of the debtor corporation, she had and still has ample opportunity so to do by leave of the bankruptcy court. Certainly that court is not lacking in power to deal with claims of antecedent fraud in the conduct of the affairs of the debtor corporation; nor lacking in desire to see that such claims are pressed, if shown to be to the advantage of the debtor corporation and its creditors. (Oral opinion of trial court, R. 90-93; also memorandum of trial court *re* plan of reorganization, R. 164-165.)

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Incidentally, although the joint petition for certiorari was filed in this case by seven petitioners, one of them, Nettie Meyer, claims that the district court erred in going ahead with the proceedings after she presented her petition of February 25, 1935; whereas the other six petitioners came into the proceedings for the first time on April 20, 1935, without challenge to the jurisdiction of the court, and participated in the subsequent hearing on the plan of reorganization.

III.

Order confirming plan of reorganization reviewable only under section 24b, at discretion of circuit court of appeals.

(No. 376 of this court; no. 5531 C. C. A.)

Two appeals were taken in *Campbell* v. *Alleghany Corporation* (C. C. A. 4), 75 F. (2d) 947,* from the order of the district court confirming a plan of reorganization under section 77B of the bankruptcy act; one appeal by allowance of the reviewing court under section 24b, the other by allowance of the district court. On the question of the appealability of the order, the circuit court of appeals said as follows (p. 955):

> "As subdivision (k) of section 77B (11 USCA sec. 207 (k) provides that proceedings under that section shall be deemed 'bankruptcy proceedings' or 'proceedings in bankruptcy' and shall be governed by the provisions of the general bankruptcy act when same are not inconsistent with the provisions of the section, and as proceedings in bankruptcy, except in the three cases mentioned in section 25, as amended, 11 USCA sec. 48, are reviewable only by appeal to superintend and revise under section 24b, as amended, 11 USCA sec. 47 (b), it follows that the proper method of re-

*Certiorari denied, case nos. 85-6 October 1935 term.

viewing the order below was by appeal to superintend and revise under section 24b. The order appealed from will be affirmed, therefore, in no. 3831; and the appeal in no. 3845 will be dismissed."

* * * * * *

Appellants contend that a confirmation order in a 77B proceeding is essentially the same as a confirmation order in a composition proceeding; that the result in both cases is a discharge in bankruptcy; that the reasoning by which an order confirming the composition is held appealable as of right applies also to an order confirming a plan of reorganization. (Petition for certiorari, pp. 15-16.)

But it is not true, however, that an order confirming a plan under section 77B carries with it a discharge of the debtor, as does an order confirming a composition. The statute governing compositions (11 U. S. C. sec. 30) provides as follows:

(b) An application for the confirmation of a composition may be filed in the court of bankruptcy after, but not before, it has been accepted in writing by a majority in number of all creditors whose claims have been allowed, which number must represent a majority in amount of such claims, and the consideration to be paid by the bankrupt to his creditors, and the money necessary to pay all debts which have priority and the cost of the proceedings, have been deposited in such place as shall be designated by and subject to the order of the judge.

(d) The judge shall confirm a composition if satisfied that (1) it is for the best interests of the creditors; (2) the bankrupt has not been guilty of any of the acts or failed to perform any of the duties which would be a bar to his discharge; and (3) the offer and its acceptance are in good faith and have not been made or procured except as herein provided, or by any means, promises, or acts herein forbidden.

(e) Upon the confirmation of a composition, the consideration shall be distributed as the judge shall direct, and the case dismissed. Whenever a composition is not confirmed, the estate shall be administered

in bankruptcy as herein provided. (July 1, 1898, c. 541, sec. 12, 30 Stat. 549; June 25, 1910, c. 412, sec. 5, 36 Stat. 839.)

Also 11 U. S. C. sec. 32 (c), as follows:—

> (c) The confirmation of a composition shall discharge the bankrupt from his debts, other than those agreed to be paid by the terms of the composition and those not affected by a discharge. (July 1, 1898, c. 541, sec. 14, 30 Stat. 550.)

Before the order confirming a composition is entered the debtor has done everything necessary to consummate the composition. There remains only the clerical task of distributing the consideration to the creditors. By contrast, the confirmation order under section 77B precedes the acts necessary to effect the reorganization;—lays out the program and directs what shall be done by the various parties. (See outline of confirmation order in this case pp. 14-16, particularly pars. 13, 15, 16, 20, 21, 22, 23, 24, 27, and 28.) Only after the debtor corporation has carried out its part of the reorganization program does it become entitled to a discharge, *viz.*—by subsequent final decree after the confirmation order has been fully executed and the reorganization completed. (Text of statute quoted at p. 17, *supra,* footnote.)

IV.

The appeal from the confirmation order was taken by Nettie Meyer alone; therefore the other six appellants who appear in this court cannot be heard to complain of the order dismissing said appeal.

Nettie Meyer alone prayed an appeal in the district court from the order of May 20, 1935, confirming the plan of reorganization. (R. 166.) She alone was granted such appeal, though "in her own behalf and for the use and benefit of the other objectors represented by Shulman,

Shulman & Abrams." (R. 168.) She alone filed an appeal bond. (R. 168; 96-97.)

Assuming that the other six objectors looked to Nettie Meyer to prosecute an appeal for their use and benefit, as well as her own, the appeal still remains that of Nettie Meyer, the only appellant of record. She alone could have abandoned the appeal at any stage; she alone may be heard to complain of the dismissal of her appeal by the circuit court of appeals.

On the other hand, what complaint can Nettie Meyer make of the order confirming the plan of reorganization? She made no objection to the plan and at no time joined in the objections made by Anna Jacobson, *et al.* (R. 141-143); nor in the "amendment" filed by Anna Jacobson, *et al.* (R. 144-145.)*

Nettie Meyer took no part in the proceedings after the entry of the order of March 20, 1935, from which she took her first appeal. It follows, we submit, that if Nettie Meyer had a right of appeal from the order of May 20, 1935, confirming the reorganization plan, she could urge on such appeal only the same objections to the jurisdiction of the court already presented in connection with the entry of the order from which she took her former appeal.

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*This proposed "amendment" was obviously not an amendment of the plan already submitted to the court, but the proposal of a fundamentally and completely different plan. Under the statute such different plan could be presented only upon prior approval of 25% of the class of creditors to which objectors belonged (holding claims not less than 10% in amount of all claims against the debtor). (Sec. 77B, sub-sec. (d); 11 U. S. C. sec. 207 (d).)

V.

The circuit court of appeals did not err in declining to exercise its discretionary power under section 24b of the bankruptcy act to grant Nettie Meyer leave to appeal from the order confirming the plan of reorganization.

As in the case of the appeal taken by leave of the district court, Nettie Meyer alone petitioned the circuit court of appeals to review the district court order of May 20, 1935. (R. 172-176.) In the affidavit attached to her petition—by her attorney, Mr. Meyer Abrams—appears the statement that he is attorney "for the other objectors who join her in said petition prepared by him." (R. 176.) This did not make the "other objectors"—not even named in the petition or affidavit unless as "*et al.*"—parties to the petition for review. (*Jackson* v. *Hosmer*, 14 Mich. 87.) Nor could the "other objectors" make themselves parties to the petition of Nettie Meyer—denied by the circuit court of appeals June 25, 1935 (R. 177-178)—by subsequent petition filed June 28, 1935 (R. 178-180), more than thirty days after the entry of the order of May 20, 1935.

* * * * * * *

Did the circuit court of appeals—exercising its discretionary power under section 24b of the bankruptcy act—err in refusing to grant Nettie Meyer a review from the district court order of May 20, 1935?

The attitude of the circuit court of appeals for the 7th circuit with respect to proceedings under section 77B and kindred sections of the bankruptcy act is forcibly expressed in its opinion, by Mr. Justice Evans, in the *Sterba* case, 74 F. (2d) 413, as follows (p. 416):*

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*The opinion, in a footnote, contains the following preliminary explanation:

"Section 74 was enacted March 3, 1933. It was passed as a relief

"This section (i.e., sec. 74) cannot meet with successful enforcement unless the court insists (a) that the plan of composition or the extension proposal be *promptly submitted,* and (b) that the plan or 'extension proposal' be carefully analyzed from the viewpoint of each secured creditor and that there be fairness to all as well as a justifiable basis for the hope of a realization of the plan.

The necessity for the prompt submission of the plan is apparent. It cannot be too strongly emphasized. This section was enacted because of the failure of receiverships to effectuate, and in many instances to attempt, reorganizations. In equity receiverships, on occasions, the jurisdiction of a court was invoked and a receiver appointed where the mortgage vastly exceeded the value of the property and there was no equity of redemption, and yet the receivership was continued for three, four and even five years with the expenses of the receivership consuming the entire revenue and leaving the bondholders in a worse position each year. The amendments to the bankruptcy act, above mentioned, were enacted to remedy the intolerable and seemingly hopeless condition that existed due to the inadequacy and abuse of the remedy which receivership proceedings afforded, as well as to a desire to help debtors who could not meet their obligations but who entertained a well-founded belief that they would ultimately pay their creditors in full from their properties, the values of which were so drastically reduced.

The amendments will, however, serve no useful purpose unless the court insists upon an early submission of the plan. The court should dismiss the proceedings and tax all costs to petitioner unless such plan is promptly forthcoming and it is deemed workable, un-

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measure and was intended to alleviate a desperate situation brought on by a sudden and extraordinary decline in values Section 75 was enacted at the same time and for the same reasons. It applies more particularly to farmers. Sections 76 and 77 apply to persons secondarily liable and to railroads. See 11 U. S. C. A. secs. 202, 203, 204, 205.

Sections 77A and 77B (11 U. S. C. A., secs. 206, 207) were enacted June 7, 1934, and were to perfect and make more effective the act of March 3, 1933, by extending its provisions to corporations generally and by expressly conferring wider jurisdiction upon federal courts."

less good cause is shown in unusual cases for an extension of time. * * *

Congress has seen fit to extend the jurisdiction of the district court and to extend the provisions of the bankruptcy act to estates of debtors who are insolvent but whose insolvency is traceable to abnormal conditions. This enlargement of jurisdiction, carrying duties in many instances administrative in character, must be assumed in the spirit in which it is delegated. It is not a case of the district court assuming a jurisdiction which may conflict with the jurisdiction of a state court that has appointed receivers. The United States district court has no alternative. The right is conferred upon a debtor to petition the United States district court for action, and the court must act. If petitioner acts in good faith and his plan is feasible, the court must further take action which will divest the jurisdiction of courts of equity, state or federal. (Then follows quotation from opinion in *Gross* v. *Irving Trust Co.*, 289 U. S. 342.)

* * * Again, it is not the United States district court which is assuming jurisdiction. It is a jurisdiction which it cannot avoid. It should, and must act unhesitatingly and in furtherance of the purpose of the act which conferred the jurisdiction. It is unfortunate that there may be clashes over jurisdiction or that animosities may develop between equity court receivers and counsel and trustees appointed under this section of the bankruptcy act. There is but one course open to the United States district court. All state and federal courts of equity must submit to and be bound by the lawful congressional action such as bankruptcy legislation.

Speaking of the plan which must be submitted for the court's and creditors' consideration it might be observed in passing that a plan is not a feasible nor a practicable one which ignores and conflicts with well considered and well matured plans ready for adoption in an equity receivership which are backed by the support of a substantial majority of the creditors.

* * * * * *

The proceedings under sections 74, 75, 76 and 77 are not the equivalents of equity receivership proceedings.

> They contemplate a feasible plan, *promptly presented*, whereby the overburdened debtor may, through creditors' cooperation (though unanimous creditor action is unnecessary) secure a scaling of debt or interest, or an extension of due date of debts. If none of these objects can be accomplished no good purpose can be attained by retaining jurisdiction of the proceedings. The case is then, one for liquidation through bankruptcy proceedings.
>
> And finally, we may add, success under this act will not be assured, unless the court recognizes that its duties are primarily administrative. It must act as the head of the administrative branch of an enterprise. It cannot sit idly by and act on plans submitted. It must originate, if necessary, and in many instances use all the forces at its command to bring about cooperation of conflicting interests. It may have to remove officers by it appointed if plans and recommendations are not presented within a reasonable time."

Appeals from orders in 77B proceedings, we submit, should be allowed only in harmony with the foregoing impressive declaration of policy. No doubt one of the principal reasons for the adoption of section 77B was to strip insincere dissentients of the power to frustrate reorganizations by strategic strike suits, interventions and appeals. This was one of the great difficulties of reorganization through equity receiverships, a difficulty that can be more effectively met by reorganization in bankruptcy, yet with ample power of both the district court and the appellate court to protect all interested parties against injustice. As well stated by Judge Wilkerson, in *Guaranty Trust Co.* v. *Chicago, M. & St. P. Ry. Co.*, 15 F. (2d) 419, at 441:

> "When it comes to turning over the property under a reorganization plan, courts will be vigilant to protect minorities against oppression and fraud. They will be equally vigilant to see that dissenting bondholders be not permitted to create a maneuvering value in their bonds."

The general policy of the bankruptcy law is to avoid delay of the proceedings by keeping appeals within the discretionary control of the reviewing court. To quote from the

opinion in *Broders* v. *Lage* (C.C.A.8), 25 F. (2d) 288, 290:

"It will be observed that section 24b provides for a review by appeal of all orders, both interlocutory and final, entered in proceedings in bankruptcy. The absolute right to prosecute such an appeal would open the door to innumerable appeals from summary orders entered in bankruptcy proceedings which might greatly impede the due and proper administration of the estates of bankrupts. We think congress sensed this danger, and for that reason wrote into the act the language 'by appeal * * * to be allowed in the discretion of the appellate court,' and thereby intended to provide that a party desiring to prosecute an appeal from such an order must make proper application to the appellate court for an order allowing such appeal, and that the appellate court upon the consideration of such application in the exercise of its discretion may either grant or deny the application. The authors of Collier on Bankruptcy, in the note to section 24, as amended, at page 159 of the 1927 supplement, say:

'The scope of this amendment, as explained by Senator Walsh who suggested it, is stated by him as follows:

'"It would be intolerable, however, to allow an appeal from every order which might be made in bankruptcy proceedings, and consequently the bill was modified so as to provide that except in the cases mentioned in section 25, the appellate court should exercise a discretion as to whether an appeal should be allowed or not. Accordingly, the plain meaning of the law as amended is that in the cases mentioned in section 25 the right to appeal is absolute, and no leave need be taken.' In all other cases, as prescribed in subdivision (b) of section 9 (24b of the bankruptcy act) the party desiring to have an order reviewed must go to the appellate court and ask leave to prosecute an appeal."'

* * * * * *

A plan of reorganization, by its nature, involves compromise and adjustment of the claims against the debtor and its property. The purpose of section 77B, manifestly, was not merely to transfer foreclosure suits from the state courts to the federal courts; not to extinguish the claims of

junior lienors, unsecured creditors and stockholders by giving them the equivalent of what they would get by a forced sale for cash in the present market, that is to say, nothing at all. The purpose is, rather, to bring about a reorganization which gives an equitable modicum of participation to the holders of junior claims who cooperate in the reorganization, a participation offsetting their rights of redemption, or as potential bidders at foreclosure sale, under state law.

In the present case the reorganization gives to the holders of $1,373,000 unsubordinated first mortgage bonds 90% of the securities of the reorganized corporation, and to the holders of $449,254.01 junior claims the remaining 10%. This court, in a case dealing with an equity reorganization, has already declared that the difference in participation between senior claimants and junior claimants may be manifested by a difference in amount of new securities of the same grade, as well as by allotment of different classes of securities. (*Kansas City Terminal Ry Co.* v. *Central Union Trust Co.*, 271 U. S. 445, 454, 70 L. ed. 1028, 1032.)

The fairness and feasibility of a plan of reorganization is essentially a question for the practical judgment of the trial court. It is quite evident from the record of this case that the judge of the district court who passed upon the plan of reorganization, the honorable John P. Barnes, did not passively accept the recommendations of the parties to the proceeding and their counsel, but gave the matter vigorous and informed personal judgment. (See memorandum of Judge Barnes *re* plan of reorganization, R. 161-165.) Note, especially, the underlying principles stressed by the court: (1) that a plan of reorganization, especially of a real estate corporation, should be as simple as possible; (2) that the relative rights and interests of all the parties should be decisively settled at the present time, "so that when it comes time to sell the property there will not be a controversy, as there certainly would be if it were

proposed to sell the property for enough to pay off class A certificates and nothing was to be left for class B or class C certificates." (R. 164.)

Regularity of the proceedings, plus the requisite statutory consents—in the present case almost unanimous—if not conclusive of the legality and equity of a plan of reorganization adopted under section 77B, are at least strongly persuasive that in approving the plan the trial court has not abused its discretion. *In re Pilsener Brewing Co.* (C. C. A. 9), 79 F. (2d) 63, 68; *In re New Rochelle Coal & Lumber Co.* (C. C. A. 2), 77 F. (2d) 881, 883; also other cases cited under point V-D, p. 26, *supra.*)

* * * * * *

For all of the reasons aforesaid, we urge that the circuit court of appeals did not err: (1) in dismissing the appeal in case no. 5941 (no. 375 of this court); (2) in dismissing the appeal in case no. 5531 (no. 376 of this court); in denying the petition of Nettie Meyer, under section 24b of the bankruptcy act, for review of the order of the district court confirming the plan of reorganization.

Respectfully submitted,

IRVING H. FLAMM,
for petitioning creditors;
MAX FREDERICK GOLDBERG,
for debtor corporation;
CLAUDE A. ROTH,
BERNARD NATH,
ARTHUR M. COX,
for bondholders committees;
all of Chicago, Illinois,
attorneys for appellees.

ISAAC E. FERGUSON,
CLAUDE A. ROTH,
HARRY E. SMOOT,
all of Chicago, Illinois,
of counsel.

IN THE

Supreme Court of the United States

OCTOBER TERM, A. D. 1935.

Nos. 375 and 376

NETTIE MEYER, ANNA JACOBSON, JACOB MEYERHOFF, JOSEPH MEYERHOFF, JULIUS MEYERHOFF, JOHN C PANKIN and RAY MANN,

Appellants,

vs.

KENMORE GRANVILLE HOTEL COMPANY, et al.,

Appellees.

On writ of certiorari to the Circuit Court of Appeals for the Seventh Circuit

PETITION FOR REHEARING

MEYER ABRAMS,
MAX SHULMAN,
134 N. LaSalle St.,
Chicago, Illinois,
Attorneys for Petitioners.

LAWYERS PRESS, CHICAGO. VAN BUREN 0710

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PETITION FOR REHEARING

I.

THE DECISION IN THIS CASE IS IRRECONCILABLE WITH THE OTHER DECISIONS OF THIS COURT.

The decision is *irreconcilable* with the decision in cases 428 and 533 rendered on the same day, and is *contrary* to the decision in *Continental Bank* v. *Rock Island* (294 U. S. 648) and to decisions rendered by the several Circuits, including the 7th Circuit Court of Appeals.

(a) The right to appeal from an order approving a plan of reorganization is well established and the opinion overlooked the adjudicated cases and the basic principle governing the right to appeal.

In *Continental Bank* v. *Rock Island, supra,* this court said: "A plan of reorganization when confirmed, *cannot be distinguished in principle from the composition with creditors.*" It there held that the approval of a reorganization constitutes a confirmation of composition in legal effect. It said: (p. 573) "With *due regard to consistency* the constitutional validity of one cannot be sustained, and that of the other denied." This *same consistency* must be applied in connection with the right to appeal from an order confirming a reorganization. The same Circuit Court of Appeals, which held in this case that an order confirming a reorganization in bankruptcy is not appealable, *had adopted the contrary view* in *In re: O'Gara Coal Co.* (260 Fed. 742). In that case *a plan of reorganization* was submitted to the Court of Bankruptcy, which plan of reorganization was approved, and a doubt arose whether the order was appealable as a matter of right or by a petition to revise. The appellants proceeded both ways. *The Seventh Circuit* dismissed the petition to revise and *held that the appeal was reviewable as a matter of right.* Judge Evans, speaking on behalf of the reviewing court, there said: (p. 744)

> "We are *convinced* that, notwithstanding the matter was brought to the attention of the court by the petition of creditors, *the proceeding was in the nature of a composition,* which, under section 14c of the Bankruptcy Act (Act July 1, 1898, C. 541, 30 Stat. 550 (Comp. St. No. 9598), *upon becoming effective, would operate* as a discharge in bankruptcy. As the granting or refusal to grant a discharge is by section

25a of the Bankruptcy Act (Comp. St. No. 9609) made reviewable by appeal, *we conclude the order here under consideration was properly reviewable by appeal. In re Friend,* 134 Fed. 778, 67 C.C.A. 500."

This citation escaped our attention when we argued the case here.

A similar decision was rendered by the 5th Circuit in *Hamilton-Brown Shoe Co.* v. *Berwold* (10 Fed. (2) 275). *This court denied certiorari* (271 U. S. 671). There, the court considered the question whether an *offer of compromise* (not a composition) was appealable. The court said:

"As will subsequently appear, the case presented is *not purely that of an administrative order*—the case must be considered as involving a *controversy* arising in Bankruptcy contemplated by 24a of the Bankruptcy Act, and appealable under the General Equity Jurisdiction of the Court."

When this court denied the application for the Writ of Certiorari it must have agreed with this view of the law.

The reason that an order confirming a composition is appealable is not because it constitutes a discharge, but because *"it results in a discharge."* (*Re*: *Gotlieb,* 262 Fed. 730, 732, 2 C.C.A.). The same reasoning should be applied to an order confirming a reorganization which *results* in a discharge.

This court distinguished a reorganization from a composition, because the former required additional steps and the latter was final. It overlooked that *in either case additional steps are necessary,* and in that sense neither order is final. Even in a composition there remain matters to be carried out subsequent to the confirmation (*Re*: *Everick*

Oil Corp., 39 Fed. (2) 765, 768, 2 C.C.A.). The discharge which follows a composition is without regard to the statute, which is superfluous. The discharge is "by operation of law" (*Re: Kornbluth*, 65 Fed. (2nd) 400, 402). The discharge in a reorganization under 77B also follows by operation of law, regardless of any special provision. The finality of an order is not determined by the entry of the discharge order, but *by the entry of the order of confirmation*, which results in a discharge. The order of confirmation of a reorganization is not any less final by the fact that *administrative matters are necessary to carry out its terms*, and that supplemental orders and decrees are necessary (*St. Louis Iron Mountain, et al.* v. *Southern Express*, 108 U. A. 24, 29). *A decree which determines the rights of the parties and leaves matters of administration and enforcement to the directions of the court by supplemental orders is appealable* because such matters are "mere incidents" to the "main relief" (*St. Louis Iron Mountain, supra*). The decree confirming the reorganization plan *adjudicated the whole controversy.* It approved the plan, directed the release of the two mortgages, the substitution of the other securities, and the matters that remained open *referred only to the enforcement and administration.* The reasoning of this court that the discharge would not follow if the order is not carried out equally applies to a composition, for there the court retains jurisdiction for six months, and if the composition is not carried out, it may also set it aside.

Mr. Justice Cardozo said in the *Broadway* case (decided simultaneously with this case, No. 533) that "the search at the moment is for a definition of an equity receivership that will *tend to minimize anomalies* and give *consistency and coherence to the statutory rule.*" This well applies here. It would be *inconsistent* to hold on the

one hand that an order on composition is appealable as a matter of right, and that an order approving a reorganization is not appealable, and is merely discretionary with the reviewing court. Under such reasoning *the facts in a reorganization proceeding could never be reviewed,* as the reviewing court is *confined to questions of law only.*

(b) An appeal from the final order of discharge would be useless and meaningless.

If it be true that no right to appeal from a reorganization plan exists, and that the only appeal lies from an order of discharge, then *an aggrieved party has no remedy.* Of what avail would such appeal be if prior to the appeal the securities are released and cancelled? Whether or not the appellant is successful in *the appeal from the discharge the released securities or the cancelled bonds* and the funds and expenses paid out in the course of the administration will not be restored to him. This especially applies to the instant case. Here, the alleged debtor was not obligated to pay the bond issue and never assumed it. Whether or not it would be discharged in bankruptcy would not in any way affect the mortgaged property, which was released by the order of confirmation as well as the mortgage debt. Section 77B was not confined to debtors who were personally indebted, but also applies to the debtors' property. A refusal to discharge a debtor is not a protection to the aggrieved security holder whose security was released and who was given questionable securities in lieu of his bonds.

II.

ACCORDING TO THE DECISIONS OF THIS COURT IN THE GRANADA AND BROADWAY CASES THE DISTRICT COURT WHOLLY LACKED JURISDICTION OF THE SUBJECT MATTER OF THIS REORGANIZATION, AND THIS DECISION WHICH DENIES THE RIGHT OF REVIEW TO ONE WHO HAS RAISED THE JURISDICTIONAL QUESTION THROUGHOUT THE PROCEEDINGS, WILL ADD GREATLY TO THE CONFUSION OF THE LAW, AND THEREFORE, A REHEARING SHOULD BE GRANTED.

In the two decisions rendered by this Court, simultaneously with the decision in this case, this court decided: (1) That a Trustee in possession is regarded as the owner, and therefore, cannot be deprived or ousted from possession by a proceeding under 77B, and (2) that 77B was not intended and does not apply to foreclosure proceedings, (3) that the jurisdiction of the District Court under 77B is not any greater than an equity receivership, and if the State Court acquired jurisdiction, the District Court has no right to interfere with its proceedings to oust it of the *res,* (4) that an involuntary proceeding cannot be based on a mortgage foreclosure which is not an equity proceeding, and such a petition does not confer jurisdiction. In the light of these decisions we fail to see how the present decision may stand.. Not only will it not "tend to minimize anomalies", but will greatly add to the confusion.

Here, two trustees were in possession since 1925 under separate bond issues executed by separate corporations. Foreclosure decrees were entered in each case in the years 1931 and 1932. Under one decree the statutory period of redemption expired, while under the other decree the

statutory period of redemption was still in operation. The alleged debtor was neither a debtor nor a mortgagor, nor was it a functioning corporation. It was never in business, never in possession, and was born in order to carry through a fraudulent reorganization plan. The proceeding for corporation reorganization was *involuntary. No act of bankruptcy was alleged. No equitable receivership existed.* The District Court *wholly lacked jurisdiction* of the subject matter according to the decisions of this court. Appellant, Nettie Meyer, initiated a proceeding in the State Court before this jurisdictionless petition was approved, *and moved for the appointment of a receiver.* Under the Act the District Court does not acquire jurisdiction until the petition is approved, so that the State Court *did acquire prior jurisdiction of the res* by the motion for the appointment of a receiver. Under the decree of this court the District Court *wholly lacked jurisdiction, its orders are a nullity and void.* Appellant moved for the dissolution of the injunction and the dismissal of the petition for want of jurisdiction. How this can be held to be a "proceeding" in bankruptcy and not a "controversy" arising in bankruptcy is beyond our understanding. The decisions upon which this court based its reasoning expressly distinguish between an appeal from an *administrative order,* which is a "proceeding" in bankruptcy, and an appeal from an order by an *adverse party,* which does not go to the administration of the estate. Here appellant *claimed adversely to the jurisdiction of the court.* This court concluded that no jurisdiction existed. Certainly such an order was appealable.

In a recent case decided by the Seventh Circuit (*Re: Tracey,* 80 Fed. (2) 9), the court concluded that a similar motion to dissolve and to dismiss the proceedings was appealable under 24a being a "controversy" and not a "proceeding" in bankruptcy.

The phrase "controversy" is limited to cases where third parties claim not in and under the administration of the bankrupt's estate in bankruptcy, but on the contrary assert *some right hostile to the title of the trustee or going to the right of the court to administer the particular estate in the bankruptcy case.* (*Snow* v. *Dalton*, 203 Fed. 843 (C.C.A. N.C.)

Appellant contested the right of the bankruptcy court to administer this property on the ground that the alleged debtor was neither debtor, owner, or mortgagor, but a *myth.*

The court did not permit the writer to argue the merits of the case orally, yet in its decision it considered the merits when it concluded (*a*) that the subject matter involved in the State Court came within the term of "Proceeding in bankruptcy," and (*b*) that the merits did not justify "to invite the exercise of discretion" to allow an appeal. We contended on oral argument that the merits of the case should be argued in order to determine these issues. The decision misconceived certain facts due to the denial to hear the oral argument on this subject matter.

The record presented a case where two trustees, officers of the house of issue, were in possession of the two properties on which separate bond issues were made for $1,000,000 each, but were in fact, operated as one unit. Because of defaults the trustees were in possesion since 1925, collected the income, and paid it over to their company, the house of issue, for moneys advanced during the years 1925 to 1931 on defaulted bonds and coupons. The house advanced this money in order to conceal the facts from the investors that the defaults existed since 1925. Thereby it was enabled to stay in business, to sell securities to the investors under the slogan that "Not a single dollar was ever lost" to the investors. The trustees were so

grossly negligent in paying over the funds to their company that they even failed to protect the property against the taxes and penalties, which resulted in sales, forfeitures, and the appointment of a tax receiver. Appellant, Nettie Meyer, brought her suit to *hold the two trustees personally liable for malfeasance and misfeasance,* and to have the house of issue and its officers account for all the funds which were wrongfully diverted, including it sought infective relief against a fraudulent reorganization. *A suit of this nature is wholly foreign to bankruptcy* proceedings and a reorganization plan of the debtor's property has no bearing upon the issues raised in the State Court. If this decision remains unchanged, the injunction issued in the District Court will permanently prevent such action against these trustees. At best, the 77B proceeding constituted an equitable receivership (see decision in Case 533). Here, the State Court aequired *prior* jurisdiction of this subject matter before the petition was approved. The whole subject matter in the District Court is not within the scope of 77B, and the Court's order was wholly void for want of jurisdiction, yet this court arrived at the conclusion that no appeal lies from a proceeding which is wholly void, and the parties are permanently enjoined from proceeding with their cause. Such a decision will add to the confusion on questions of jurisdiction and Appellate procedure, and this court should give due consideration to the petition for rehearing before the decision will remain final.

III.

THIS COURT MISCONCEIVED THE RECORD WHEN IT STATED IN ITS OPINION THAT IT WAS NOT CONTENDED THAT THE ORDER WAS A CONTROVERSY ARISING IN BANKRUPTCY.

The statement of the court that "it is not contended that this order is one in a controversy in bankruptcy" is entirely due to a misconception of the record. Under Point III of the petition (page 16) this contention was made. Under Point I of the reply brief (pages 6 and 7) this contention was again argued. Subsequent to the filing of the reply brief, the Circuit Court of Appeals for the Seventh Circuit rendered an opinion which we supplied by a motion filed in this court. In view of all of these matters the court overlooked this contention.

For the foregoing reasons we believe that a rehearing should be allowed so that the law may be clarified, the inconsistencies minimized, and the complicated procedure concerning appeals will be once and for all fully settled.

Respectfully submitted,

MEYER ABRAMS,
MAX SHULMAN,
Attorneys for Petitioners.

CERTIFICATE OF COUNSEL.

The undersigned, Meyer Abrams, one of the attorneys for the petitioners, does hereby certify that the petition for rehearing is presented in good faith and is not interposed for purposes of delay.

MEYER ABRAMS,
One of the Attorneys for the Petitioners.

SUPREME COURT OF THE UNITED STATES.

Nos. 375-376.—October Term, 1935.

Nettie Meyer, Anna Jacobson, Jacob Meyerhoff, et al., Petitioners, 375 *vs.* Kenmore Granville Hotel Company, et al.	On Writs of Certiorari to the United States Circuit Court of Appeals for the Seventh Circuit.
Nettie Meyer, Anna Jacobson, Jacob Meyerhoff, et al., Petitioners, 376 *vs.* Kenmore Granville Hotel Company, et al.	

[February 3, 1936.]

Mr. Justice Stone delivered the opinion of the Court.

Certiorari was granted in these cases, — U. S. —, as companion cases to *St. Louis Can Co.* v. *General American Life Insurance Co.*, 77 F. (2d) 598 (C. C. A. 8th), in which certiorari was granted, — U. S. —, on the same day, to resolve questions as to the mode of appeal from certain orders entered by a district court in the course of a reorganization proceeding under § 77 B of the Bankruptcy Act, 48 Stat. 912, 11 U. S. C. 207. The writ in *St. Louis Can Co.* v. *General American Life Insurance Co.* was later dismissed by this Court on stipulation of the parties, — U. S. —.

On February 4, 1935, an involuntary petition was filed in the district court for northern Illinois for reorganization of a corporate debtor. The debtor filed an answer admitting the essential allegations of the petition, and the district court found that the petition was filed in good faith, and ordered that it stand approved, and that creditors be restrained from asserting claims against the property of the debtor. After this order was entered the petitioner here filed a petition in the reorganization proceeding setting

up that she owned some of the mortgage bonds to which the property of the debtor was subject; that subsequent to the petition for reorganization, but before it was approved, she had brought suit in the state courts against the debtor and others for an accounting, charging fraud in the issue and sale of the bonds and a fraudulent scheme to bring about a reorganization of the debtor to the detriment of the bondholders and to the advantage of the defendants in the suit. She prayed that the petition for reorganization be dismissed for want of good faith and of jurisdiction in the district court, and that the injunction be dissolved. The district court entered an order March 20, 1935, denying the petition. From this order it allowed an appeal to the Court of Appeals for the Seventh Circuit, which dismissed the appeal without opinion. The correctness of this ruling is presented in No. 375.

Meanwhile, the district court proceeded with hearings, in which petitioner took no part, on a proposed plan of reorganization. The plan, after certain modifications, was ultimately approved by 94% of the bondholders of one class and 95% of another, and, with further changes directed by the court, was confirmed by order entered May 20, 1935. The Court of Appeals dismissed without opinion petitioner's appeal from this order, allowed by the district court. And it denied petitioner's application for leave to appeal from the same order, on the ground that petitioner, who alone sought leave to appeal, had not objected to the plan in the bankruptcy court, and so was not in a position to challenge the plan on her own behalf or on that of bondholders who had objected. The correctness of these rulings of the Court of Appeals is presented in No. 376.

1. The question in No. 375 is whether the order of the district court denying the application to dismiss the proceeding brought under § 77 B and to dissolve the injunction generally restraining creditors, is, for purposes of appeal, the equivalent of "a judgment adjudging or refusing to adjudge the defendant a bankrupt," which by § 25 (a) of the Bankruptcy Act, 44 Stat. 665, 11 U. S. C. 48 (a), is appealable as of right to the court of appeals.

When § 77 B introduced into the Bankruptcy Act the proceeding for reorganization of a corporation, it was provided that the procedure to be followed in case reorganization were ordered should, so far as practicable, follow that already established by

the Bankruptcy Act for liquidation proceedings. Section 77 B (k)[1] directs that the other sections of the Bankruptcy Act shall apply to proceedings under § 77 B, unless inconsistent with it, and that "... the date of the order approving the petition or answer under this section shall be taken to be the date of adjudication, and such order shall have the same consequence and effect as an order of adjudication."

The appeal provisions of §§ 24 and 25[2] of the Bankruptcy Act are thus made applicable to orders entered in the course of a reorganization proceeding, and an order approving or disapproving a petition for reorganization is made the equivalent, at least for purposes of an appeal under § 25 (a), of a judgment adjudging or refusing to adjudge the defendant a bankrupt. By § 24 (a) and (b) appeals in "proceedings" in bankruptcy, as distinguished from appeals in "controversies arising in bankruptcy," may be taken only on leave granted in the discretion of the appellate court, except

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1 Secion 77 B, sub-section (k):

"... All other provisions of this title, except such as are inconsistent with the provisions of this section, shall apply to proceedings instituted under this section, whether or not an order to liquidate the estate has been entered. For the purposes of such application, provisions relating to 'bankrupts' shall be deemed to relate also to 'debtors'; 'bankruptcy proceedings' or 'proceedings in bankruptcy' shall be deemed to include proceedings under this section; the date of the order approving the petition or answer under this section shall be taken to be the date of adjudication, and such order shall have the same consequence and effect as an order of adjudication."

2 Section 24:

"(a) The Supreme Court of the United States, the circuit courts of appeal of the United States, the Court of Appeals of the District of Columbia, and the supreme courts of the Territories, in vacation, in chambers and during their respective terms, are invested with appellate jurisdiction of controversies arising in bankruptcy proceedings from the courts of bankruptcy from which they have appellate jurisdiction in other cases.

"(b) The several courts of appeal and the Court of Appeals of the District of Columbia shall have jurisdiction in equity, either interlocutory or final, to superintend and revise in matter of law (and in matter of law and fact the matters specified in section 48 of this title) the proceedings of the several inferior courts of bankruptcy within their jurisdiction. Such power shall be exercised by appeal and in the form and manner of an appeal, except in the cases mentioned in said section 48 of this title to be allowed in the discretion of the appellate court."

Section 25 (a):

"Appeals, as in equity cases, may be taken in bankruptcy proceedings from the courts of bankruptcy to the circuit courts of appeal of the United States and the Court of Appeals of the District of Columbia and to the supreme courts of the Territories in the following cases, to wit: (1) from a judgment adjudging or refusing to adjudge the defendant a bankrupt; (2) from a judgment granting or denying a discharge; and (3) from a judgment allowing or rejecting a debt or claim of $500 or over. . . ."

that in the cases enumerated in § 25 (a), including, in clause (1), "a judgment adjudging or refusing to adjudge the defendant a bankrupt," an appeal may be taken as of right.

The petitioner appealed not from the order approving the reorganization, but from that denying her application to dismiss the reorganization proceedings. It is not contended that this order is one in a controversy arising in bankruptcy, appealable as of right under § 24 (a). See *Taylor* v. *Voss,* 271 U. S. 176, 181; *Harrison* v. *Chamberlin,* 271 U. S. 191; *Hewit* v. *Berlin Machine Works,* 194 U. S. 296, 299, 300. It is urged that it is the equivalent of an order approving a petition in a reorganization proceeding, which § 77 B (k) assimilates to an order of adjudication, appealable as of right. But an order refusing to set aside an adjudication of bankruptcy is not within § 25 (a) clause (1). This Court has held that an appeal can be taken from such an order only on leave of the appellate court, under § 24 (b). *Vallely* v. *Northern Insurance Co.,* 254 U. S. 348. The present appeal from the order refusing to dismiss the reorganization proceedings does not stand on any different footing, and was rightly dismissed because taken without leave of the appellate court. *Humphrey* v. *Bankers Mortgage Co.,* 79 F. (2d) 345; *Vitagraph, Inc.* v. *St. Louis Properties Corporation,* 77 F. (2d) 590; *St. Louis Can Co.* v. *General American Life Insurance Co., supra; Credit Alliance Corporation* v. *Atlantic Pacific & Gulf Refining Co.,* 77 F. (2d) 595; and see *Wilkerson* v. *Cooch,* 78 F. (2d) 311.

That part of petitioner's application to the district court which asked that the injunction restraining creditors be set aside does not present a "controversy arising in bankruptcy" as distinguished from a "proceeding" in bankruptcy. The relief from the restraining order which petitioner sought was but incidental to her assault on the order approving the petition, and raised no issue capable of litigation independently of the proceeding in the bankruptcy court. It related only to the due administration of the pending proceeding and so was a "proceeding" in bankruptcy, in which the allowance of an appeal is discretionary. See *Taylor* v. *Voss, supra; Harrison* v. *Chamberlin, supra.*

2. In No. 376 petitioner contends that the order of the district court approving the plan of reorganization corresponds to an order confirming or rejecting a composition with creditors, and that the

latter, as was held in *United States, ex rel. Adler* v. *Hammond*, 104 Fed. 862, is appealable as of right under § 25 as equivalent to an order "granting or denying a discharge." But we think it plain that an order confirming a plan of reorganization under § 77 B is not the equivalent of a judgment granting or denying a discharge, for, unlike confirmation of a composition, see § 14, 30 Stat. 550, 11 U. S. C., § 32 (c), it does not operate as a discharge. The release of the debtor in a reorganization proceeding is contingent upon the performance of its part of the reorganization plan. Section 77 B (h) commands the debtor and others to execute the plan of reorganization, when confirmed, under the direction of the court, authorizes the court to make appropriate orders to that end, and provides that "upon the termination of the proceedings a final decree shall be entered," which "shall discharge the debtor from its debts and liabilities." Discharge is effected not by confirmation of the plan but by the final decree.

Confirmation of a plan of reorganization is but a step in the administration of the debtor's estate, and, for reasons already stated, is an order in a proceeding in bankruptcy rather than a controversy arising in bankruptcy proceedings, and appeal lies only in the discretion of the appellate court. See *Campbell* v. *Allegheny Corporation*, 75 F. (2d) 947, 955.

3. In the exercise of the discretion conferred upon it by § 24 (b) the court below denied the application for leave to appeal from the order of the district court confirming the plan of reorganization. Petitioner, who alone asked leave to appeal, made no objection to the plan. Her criticisms of the plan are not of a character to invite the exercise of the discretion of the court to examine them for the first time on appeal.

Affirmed.

Mr. Justice VAN DEVANTER took no part in the consideration or decision of these cases.